Montana. Board of Railroad Commissioners

Annual report of the Board of Railroad Commissioners of

FIFTH ANNUAL REPORT

OF THE

Board of Railroad Commissioners

OF THE

State of Montana

Year Ending November 30, 1912

"INDEPENDENT PUBLISHING COMPANY, HELENA, MONTANA"

Helena, Montana, Nov. 30th, 1912.

To His Excellency, HON. EDWIN L. NORRIS,
Governor.

In accordance with Section 4396, Revised Codes, we have the honor to submit herewith Annual Report containing an account of all matters pertaining to this Department for the year ending November 30th, 1912.

Respectfully,

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

B. T. STANTON, Chairman.
D. BOYLE,
E. A. MORLEY,
Commissioners.

R. F. McLAREN, Secretary.

PREFACE.

Report has not been made herein of cases pending before the Board. All unfinished investigations, and all matters not concluded on this date, have been withheld and will appear in Annual Report for 1913.

Copy of this Report will be mailed free upon request.

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PART I.

STATION AND TRAIN SERVICE.

BEFORE THE RAILROAD COMMISSION OF MONTANA

CARTER, MONTANA, and Residents of,

Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY,

Defendant.

IN THE MATTER OF Requiring an Agency Established at Carter.

HEARING, January 24th, 1912.
DECIDED, March 18th, 1912.

REPORT AND ORDER OF THE COMMISSION.

Number 51.

By their petition filed November 25th, 1911, complainants allege that the revenue to the defendant during the past twelve months amounted to more than Ten Thousand Dollars on freight and passenger business to and from Carter; and in view of this amount of traffic, a non-agency station did not afford "Reasonable accommodations" to the public; therefore prayed that an order be made requiring an agency established and make such other and further order as the Commission might deem necessary and just in the premises.

Hearing at Carter, Montana, January 24th, 1912.

REPRESENTED:

Complainants	By P. F. McMahon,
	" Albert H. Stewart.
Defendants	By Veazey & Veazey,
	" C. O. Jenks,
	" J. T. McGaughey.
Commissioners	Stanton and Boyle.

Carter is a station located on the Great Falls-Havre line of the Great Northern Railway, in Chouteau County. The nearest agency on the east is Benton, 15.6 miles, and on the west, Portage, 12.6 miles distant from Carter. In other words, the distance between agencies is 28.2 miles. The testimony showed that the territory contiguous to Carter, which on account of the topography of the country would naturally and logically

transact its railroad business at that station, comprised ten townships, or three hundred and sixty sections, nealy all of which was actually taken up and settled on by three hundred and fifty (estimated) families, the greater portion of whom had "come in" late in 1909 or early in 1910. Prior to that time there was no town of Carter, and very few homesteaders in that vicinity. Thus it will be seen that the community is a new one, and in fact the first crop raised was last season, 1911; the bulk of the grain was not shipped, but held for seeding purposes.

By the testimony of witnesses competent to make an estimate, there were approximately five thousand acres seeded in 1911, while for 1912 there were plowed, and much of it already seeded to winter wheat, between eighteen and twenty-five thousand acres; as will be noted, **three and one-half to four times** the acreage of 1911. It was also the concensus of opinion that the population of this district was about three thousand.

The revenue of the railway company at Carter station, as shown in statement submited in evidence, and from the reports of its auditing department on file with the Commission, was:

1911.	Freight Forwarded	Freight Received	Passenger Business	Total
January	$4.26	$297.31	$70.80	$372.37
February	.09	748.52	104.37	852.98
March	25.27	1.755.47	118.42	1,899.16
April	3.06	1,696.97	115.35	1,815.38
May	13.23	780.54	114.10	907.87
June	2.55	1,245.70	127.02	1,375.27
July	3.98	858.57	112.45	975.00
August	69.63	632.34	132.70	834.67
September	236.84	1,057.83	210.84	1,505.51
October	55.86	832.87	145.97	1,034.70
November	296.84	991.30	101.80	1,389.94
December	289.78	201.94	111.07	602.79
TOTAL	$1,001.39	$11,099.36	$1,464.89	$13,565.64
Year ending June 30, 1910	43.24	13,119.37	936.89	14,099.50
Year ending June 30, 1911	267.40	12,083.55	1,311.96	13,672.91

It will be noted that the total revenue was practically the same in each of these twelve-month periods, but this is not attributable to constancy along any established lines. Up to this time "Freight received" has figured about 88 per cent of the gross receipts, due largely, during the earlier period, to homesteaders coming in with carloads of household goods, stock, etc. There has not, however, been much of this class of freight received during the year ending December 31st, 1911,

for which, on incoming freight, the revenue was almost one thousand dollars per month; consisting of, as the record states, machinery, lumber, coal, merchandise, etc. This is cited merely to show that the earnings of the railway company on business destined to and from Carter, averaging about $1,150.00 per month since July 1st, 1909, have not been diminished even though the period of emigation practically terminated a year and a half ago.

Looking at "Freight forwarded" figures, it will be observed that the average for calendar year 1911 was only about $84.00 per month, and considerably less than that for the preceding years. As stated in this report, the first crop harvested was in the fall of 1911, and most of the grain, instead of being shipped, was held for seed. In other words, the Carter district has not heretofore had anything for the railroad to haul out, and will not have until the 1912 crop is harvested; what this will amount to, cannot well be estimated at this time.

There is at Carter a small depot, probably large enough to take care of the business for some time to come. The Commission is impressed with the thriftiness of the community, and we do not hesitate to say that there are many open stations (agencies) throughout the state, where less business is now being transacted than at Carter, and in our judgment, the present facilities are not commensurate with amount of traffic handled.

Order.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties hereto, and full investigation of the matters and things involved having been had, and the Commission having, on the date hereof, made the preceding report, containing its findings of fact and conclusions thereon, which said report is made a part hereof:

IT IS ORDERED that the defendant, the Great Northern Railway Company, shall not later than May 1st, 1912, appoint a custodian to look after its business at the station of Carter, and shall, not later than September 1st, 1912, open said station with an agent in charge, to continue until the further order or approval of this Commission; provided, however, that after January 1st, 1913, if so desired, and application made, the said railway company will be given a further hearing if in its opin-

ion the continuance of an agency is unwarranted in view of actual figures to be submitted to the Commission.

The Secretary is directed to serve upon the parties to this complaint, a true and certified copy of this Report and Order.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena, Montana, March 18th, 1912.

BEFORE THE RAILROAD COMMISSION OF MONTANA

KREMLIN, MONTANA, and Vicinity, Residents of,
Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY,
Defendant.

IN THE MATTER OF Requiring a Depot Built and an Agency Established at Kremlin.
HEARING, April 4th, 1912.
DECIDED, April 20th, 1912.

REPORT OF THE COMMISSION.

Number 52.

By their petition filed February 3rd, 1912, complainants allege that the business transacted with the trailway company during the past year at Kremlin has averaged between $400.00 and $500.00 per month, which figure would be greatly augmented if an agent were stationed there. That the country tributary to Kremlin is fast settling up, and that the people are not being afforded "Reasonable Service."

Hearing at Kremlin, April 4th, 1912.

REPRESENTED:

Complainants	By Peter W. Bishop.
Defendants	By I. Parker Veazey, Jr.,
	" B. Lantry, Asst. Supt.,
	" J. S. Herman, Trav. Freight Agt.
Commissioners	Morley and Boyle.

As stated, complaint was filed February 3rd, signed by P. W. Bishop, "For the petitioners," of which there were sixty-seven, and on March 30th another petition was presented by E. C. Carruth, bearing thirty-three signatures, eighteen of which were also signers of the original, requesting that no action be taken for the present, "Realizing that the business at Kremlin will not justify the construction of a standard depot at this time." It was apparent that there were two factions interested, but the Commission could not, of course, withdraw the original complaint upon the request of another; the hearing was according held as docketed.

Kemlin is a station located on the main line of the Great orthern Railway in Hill County, the nearest agencies being

Gildford 10.1 miles west, and Havre 19.5 miles east, making the distance between open stations 29.6 miles.

The testimony offered was vague. No figures were available to show the number of acres plowed or seeded for this season's crop. The Commission was unable to learn the number of settlers or families in the territory tributary to that station. These items were variously "estimated" by witnesses, but no testimony was given upon which a tangible deduction could be made. In a general way it may be said that the district for which Kremlin would be the logical railroad point extends from a line running north and south half way between Kremlin and Gildford, and a similar line half way between Kremlin and Havre; on the north the boundary is the Milk river, ten miles away, and on the south about the same distance, or half way to Box Elder. North of the Milk river, which is an extensive agricultural section, would be tributary to Kremlin, if there were a bridge, but until there is some means is provided for crossing the river, the business must go tto Havre.

The Commission was favorably impressed with the country surrounding Kremlin; there can be no question as to the productiveness of the soil, and in time there will be enough business to require the services of an agent; but, the testimony shows that most of the land was settled on in 1909 and 1910, no crops were raised in 1910, and practically nothing for shipment in 1911. Petitioners' statement that the business transacted with the railway company averaged between four and five hundred dollars per month is correct, and the following tabulation shows the exact figures for year ending January 31st, 1912:

1911.	Freight Forwarded	Freight Received	Passenger Business	Total
February	$.....	$118.44	$31.85	$150.29
March	23.85	403.96	67.60	495.41
April	3.90	408.97	85.41	498.28
May	68.79	503.19	84.20	656.18
June	3.05	380.02	78.25	461.32
July	25.73	130.08	101.75	257.56
August	17.68	122.05	84.30	224.03
September	95.56	291.58	57.45	444.59
October	8.42	280.24	97.92	486.58
November	209.11	570.48	109.00	888.59
December	.....	254.05	93.45	347.50
January, 1912	11.06	251.99	37.85	300.90
TOTAL	$467.15	$3,815.05	$929.03	$5,211.23

It will be noted that about 90 per cent of total freight earnings was revenue from freight **received,** due to incoming settlers' effects, machinery, etc.; that is, the community had nothing to ship out, the average earnings to the railway company on outgoing business being **less than forty dollars per month.**

There is no depot at Kremlin; there is a cinder platform for the convenience of passengers, and where feight is loaded and unloaded. This platform is directly in front of and distant from the section house about sixty feet. The large front room of the section house is set apart for a "waiting room," and is kept warm and comfortable at all times. This affords substantially the same protection and convenience to passengers as would a depot, with the exception that tickets are not on sale; and as for freight business, the preceding statement speaks for itself. There is no doubt but the Kremlin territory will later be developed and become productive, but we are of the opinion that this petition was made at least a year too soon, and in equity, upon the showing made and taking into consideration all of the conditions herein set forth, must dismiss the complaint.

The Secretary is directed to serve upon the parties hereto a true and certified copy of this Report.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena, Montana, April 20th, 1912.

BEFORE THE RAILROAD COMMISSION OF MONTANA

DUTTON, Residents of and Vicinty,

Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY,

Defendant.

IN THE MATTER OF Requiring an Agency established at Dutton.

HEARING, March 5th, 1912.
DECIDED, May 15th, 1912.

REPORT AND ORDER OF THE COMMISSION.

Number 53.

By their petition filed December 12th, 1911, complainants allege that the defendant receives for freight charges alone, at the station of Dutton, between one thousand and one thousand five hundred dollars per month, which revenue would be materially increased with the services of an agent. Therefore prays that the defendant be required to open the station with an agent in charge for the proper and reasonable accommodation of the public.

Hearing at Dutton, March 5th, 1912.

REPRESENTED:

Complainants.....By Phil I. Cole, Counsel.
Defendants.....By C. O. Jenks, Div. Supt.,
" J. T. McGaughey, Asst. Gen'l Freight and Pass. Agt.
Commissioners.....Stanton, Morley and Boyle.

Dutton is a station located on the Great Falls-Shelby line of the Great Northern Railway, in Teton County. The nearest agency on the east is Vaughn, and on the west Collins, distant from Dutton twenty-five and eight miles respectively, making the distance between open stations at the present time thirty-three miles. The territory tributary to Dutton is devoted almost exclusively to farming; the record shows that the district which logically would make that station its shipping and receiving point has a population of between twelve and fifteen hundred people, actually residing on their homesteads, although the town of Dutton proper has only about one hundred inhab-

itants. It also shows that the great majority of these people "came in" during 1909 and 1910, prior to which time the land in that vicinity was not taken up. In other words, 1910 was the first crop harvested, and the season of 1911 furnished the first grain for shipment. Last year there were four steam and gasoline plow outfits working in the Dutton district; two more have been added this spring, making six in all, and the testimony of the plow operators shows that they have contracted for all the plowing they can possibly do this season. It was the consensus of opinion of witnesses that the acreage plowed and under crop in 1912 would be at least double that of 1911. As nearly as could be estimated, the less than carload freight business received at Dutton amounted to about ten tons per week. The record shows that two threshing outfits threshed last fall approximately one hundred and sixty thousand bushels of grain. Not all of this, however, was shipped from Dutton; some went to Power and some to Collins, while a large per cent was held for seeding purposes locally. No better testimony is available as to the business received and forwarded than the auditor's statement of earnings offered by the defendant as follows:

1911.	Freight Forwarded	Freight Received	Passenger Business	Total
February	$ 1.61	$843.66	$100.90	$946.17
March	40.96	1,145.23	172.98	1,359.17
April	328.33	1,531.60	175.71	2,035.64
May	* 99.92	345.71	180.97	426.76
June	9.60	1,118.73	205.47	1,333.80
July	660.82	1,247.97	231.82	2,140.61
August	942.25	365.39	148.08	1,455.72
September	19.43	* 92.29	177.87	105.01
October	35.88	519.56	183.40	738.84
November	560.04	743.99	179.18	1,483.21
December	754.74	720.77	174.72	1,650.23
January, 1912	364.99	155.06	128.44	648.49
TOTAL (12 months)	$3,618.73	$8,645.38	$2,059.54	$14,322.65
Monthly Average Years Ending—				
January 31, 1912	301.56	720.45	171.63	1,193.64
June 30, 1910	242.76	1,426.12	167.74	1,836.62
June 30, 1911	55.41	907.85	156.37	1,119.63

*Credit.

It will be noted from the above statement that the average monthly revenue to the railway company for the three chronological twelve-month periods was $1,836, $1,119, $1,193, seventy-four per cent of which represents charges on freight received, twelve per cent passenger business, and the balance, fourteen per cent, freight forwarded. These figures show conclusively

that the people of the Dutton section have thus far been paying out their money without any returns, that is, they have had nothing to ship to market, nevertheless they have paid the railway company an average of $1,383 per month for the past three years. This, taking into consideration the development of the country as hereinbefore referred to, will, no doubt, be greatly increased this year.

Further, Choteau, the county seat of Teton county, an inland town of about eight hundred inhabitants, is located on the north side of the Teton river, and for many years has transacted its railroad business at Collins; the distance, Choteau to Collins, is twenty-five miles. In 1911, a bridge was built over the Teton river east of Choteau, opening up a direct route to Dutton, and shorter than the road to Collins by two miles. Not only that, but the new road is a much better highway, particularly in the spring of the year and during the rainy seasons. The Commission has been petitioned by the residents of Choteau and surrounding country, said petition bearing ninety-three signatures, praying that an agency be established at Dutton, setting forth, first: "Dutton is Choteau's nearest railroad point"; second: "The road to Dutton is by far the best road that Choteau has to any railroad point"; third: "Most of the freight for Choteau would be handled through Dutton if there were a depot and an agent at that point."

It might be well to explain that although it is only eight miles from Dutton to Collins, practically all of the business south of the Teton river must come through Dutton, as there is no means of crossing the river in the direction of Collins, and the topography of the country is such that the loaded haul, while longer, would have the advantage of continuous declivity; a condition which largely controls the shipping of that locality.

Order.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties hereto, and full investigation of the matters and things involved having been had, and the Commission having on the date hereof made its report containing its findings of fact and conclusions thereon, which said report is made a part hereof;

IT IS ORDERED that the defendant, the Great Northern Railway Company, shall not later than September 1st, 1912, establish an agency at the station of Dutton, such agency to

continue until the further order or approval of this Commission. Provided, however, that after January 1st, 1913, if so desired and application made, the said railway company will be given a further hearing if in its opinion the continuance of an agency is unwarranted, in view of actual figures to be submitted at that time.

The Secretary is directed to serve upon the parties to this complaint a true and certified copy of this Report and Order.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena, Montana, May 20th, 1912.

BEFORE THE RAILROAD COMMISSION OF MONTANA

IN THE MATTER OF Establishing an Agency at the station of Grace, Montana.

GRACE, MONTANA, Residents of and Vicinity,
Complainants,

vs.

CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY,
Defendant.

HEARING, June 25th, 1912.
COMPROMISE, July 16th, 1912.

REPORT OF THE COMMISSION.

Number 54.

Hearing held at Grace, Montana, June 25th, 1912.

Represented:

Complainants.....By R. L. Clinton, Counsel.
Defendant.....By A. J. Hillman, D. F. & P. A.
Commissioners.....Morley and Boyle.

By petition filed March 28th, 1912, complainants alleged that the amount of freight and passenger business to and from the station of Grace was ample to justify the services of an agent, and without an agency the public was not being accorded what the law contemplated as "Reasonable Service."

Grace is a station on the main line of the Chicago, Milwaukee & Puget Sound Railway, on the east side of the Butte Mountain. The nearest agency on the east is Piedmont, 14.5 miles, and on the west Butte, 24.4 miles, making the distance between open stations 38.9 miles. The business of Grace consists largely of mining, and agriculture in a small way. The testimony offered at the hearing, and also the figures submitted by the defendant, show conclusively that the volume of traffic handled at that station is not sufficient to warrant the defendant to go to the expense of establishing an agency and maintaining an open station. In fact, for the six months prior to date of hearing, the total revenue, both freight and passenger, was hardly more than enough to pay the salary of the agent, and incidental expenses.

The railway company has, since the line was built, maintained a telegraph station at Grace, and has a small building which would answer the purpose of a depot for the present, and with the understanding that the revenue was insufficient to require an agency, and that the Commission would authorize the services of the agent discontinued if the railway company found it no longer necessary, for operating reasons, to maintain Grace as a telegraph station, it was agreed by all parties that the operator would be checked in as an agent to act as long as his services were required there by the telegraph department. Accordingly the agency was established August 16th, 1912.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Dated at Helena, Montana, the 27th day of August, 1912.

BEFORE THE RAILROAD COMMISSION OF MONTANA

HINSDALE, Montana, Residents of, DODSON, Montana, Residents of, TRAVELING SALEMEN OF NORTHERN MONTANA,

Complainants,

vs.

GREAT NORTHERN RAILWAY COMPANY,

Defendant.

IN THE MATTER OF Alleged Unreasonable Passenger Train Service at Hinsdale, Saco and Dodson, Montana.

HEARING, August 7th, 1912.
DECIDED, Sept. 20th, 1912.

REPORT AND ORDER OF THE COMMISSION.

Number 55.

Hearing held at Saco, Montana, Aug. 7th, 1912.

REPRESENTED:

Complainants	By C. H. Stevens, Counsel, " T. E. Crutcher, Counsel, " L. S. Autrey, for the Traveling Men.
Defendant	By I. Parker Veazey, Jr. Counsel, " J. T. McGaughey, A. G. F. & P. A.
Commissioners	Stanton and Boyle. W. S. Towner, Counsel.

Hinsdale, Saco and Dodson are stations on the main line of the Great Northern Railway, between Glasgow and Havre, Montana, the two first named being in Valley County, while Dodson is in the new county of Blaine; and at the time this complaint was made, and at the present time, the passenger train service at all three points consists of a local train each way daily. This, complainants alleged, was not what the law contemplated as "Reasonable Service," and prayed for relief.

Glasgow, the county seat of Valley County, is situated east of Hinsdale, Saco and Dodson, 25.8, 38.6 and 82.8 miles respectively. The local passenger train east-bound arrives at Glasgow at 8:55 p. m.; the local west-bound leaves Glasgow 9:30 a. m. Thus it will be seen that passengers from points west must transact their business after 8:55 p. m. or before 9:30 a. m., as there is no other train until the following morning.

Complainants testified that their business in Glasgow could not be attended to at night or so early in the morning, and they were, therefore, forced to spend two nights and one day in the county seat.

West-bound passenger train No. 3 is scheduled to leave Glasgow at 9:20 p. m., Hinsdale 10:05, Saco 10:29 and Dodson 11:49 p. m., but this train is not carded to stop at any of these stations except Glasgow. Defendant testified that additional stops to train No. 3 would burden it so that it could not make schedule time, which between Glasgow and Havre, distance 152.7 miles, is four hours, twenty-three minutes, or an average speed of 34.8 miles per hour. The service of this train at Hinsdale, Saco and Dodson would permit the people of these places to return home at night instead of waiting over until the following morning for the local, practically spoiling another day.

The need for improved service east-bound is not apparent. The Commission is not disposed to unnecessarily burden train No. 3, and we do not think that this through night train should be required to do any local work that can be reasonably well taken care of by some other train, but in view of the amount of travel between the three stations involved and Glasgow, the county seat of Valley County, and the inconvenience of passengers from the east being obliged to change cars and take the local at some point east of Hinsdale, Saco and Dodson,

IT IS HEREBY ORDERED that, effective October 10, 1912, the defendant shall stop its passenger train Number 3 at the stations of Hinsdale, Saco and Dodson to let off passengers from Glasgow or points east thereof, and this arrangement shall remain in effect until the further order or approval of this Commission. The Secretatry is directed to serve upon the parties hereto a true and certified copy of this Report and Order.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTA.

By R. F. McLAREN, Secretary.

Dated at Helena, Mont., Sept. 20th, 1912.

YELLOWSTONE PARK RAILWAY (OPERATION).

The Yellowstone Park Railway, 10.4 miles long, extends from Chestnut Junction with the main line of the Northern Pacific to Cook's Mine, and serves what is known as the Trail Creek Coal fields. This railroad was built about fourteen years ago and for the first ten years of its existence, was operated by the Northern Pacific Company under a traffic contract. During this period a great deal of development work was done in the Trail Creek fields and large sums of money expended. At the expiration of ten years, this contract between the Yellowstone Park Railway Company and the Northern Pacific Railway Company was renewed until Dec. 31, 1911.

Early in December, 1911, the Northern Pacific gave notice to all concerned that that company would cease operating the said Yellowstone Park Railway on December 31st, and that all cars and equipment would on that date be withdrawn from the service. Mr. C. L. Nichols, General Superintendent, advised the Commission under date of December 22nd, in the following language:

> "We never came out even on this proposition and we have been operating this road from month to month endeavoring to have the owners take it off our hands and operate it themselves * * * I am giving this information to you so that you will understand that after December 31st, 1911, the Northern Pacific Railway Company will have ceased to operate the railway in question."

Complaints from practically all of the interests in Trail Creek coal fields were immediately presented to the Commission, citing the seriousness of the situation in view of contracts under bond which must be filled, and furthermore, a shut-down of the mines, which would necessarily follow the abandonment or discontinuance of railroad service, would work a serious hardship on the miners employed and their families of whom there were approxicately one thousand, in the affected district.

The Northern Pacific Railway Company of course could not be compelled to operate the property of another company, but, having the interests of the community in mind, a meeting was arranged between the representatives of both companies, the coal mine operators, and the Railroad Commission, at Helena,

December 29th, 1911, at which time Mr. J. C. Williams, representing the Yellowstone Park Railway Company, offered to turn over the railroad of that Company to the Northern Pacific Jan. 1, 1912, "and permit the said Northern Pacific to have, hold and operate the same without rental or other charge until April 1st, 1912, the Northern Pacific Company to have the gross proceeds from operation during such period, and to pay all maintenance and operating expenses, protecting the Y. P. Railway Company against all claims whatsoever on account of operation and maintenance during said period, the road to be returned and possession delivered to the Yellowstone Park Railway Company April 1st, 1912, in as good condition, ordinary wear and tear excepted." This proposition was submitted by Mr. M. S. Gunn, Counsel for the Northern Pacific Railway Company, and accepted by that Company, thus enabling the fulfillment of contracts and affording employment for the balance of the winter to the miners in that section. The Northern Pacific did not cease operation on March 31st, but agreed to continue to operate the Y. P. Railway "for a short time longer, pending final arrangements now under consideration by owner to take this line over."

The Commission is not informed as to the basis of the present contract, but the Northern Pacific Railway Company advises us that it has agreed "to operate the Yellowstone Park Railway until April 15th, 1913."

SHIELDS RIVER VALLEY BRANCH—NORTHERN PACIFIC RAILWAY.

Daily Train Service.

Refer to the Commission's Report No. 49, Page 21, annual report year ending November 30th, 1911, in the matter of alleged insufficient train service on the Shields River Branch of the Northern Pacific Railway. For reasons set forth in said report, the complaint was dismissed without prejudice to the cause of complainants. It will be noted that this report was made Sept. 25th, 1911.

This matter was again taken up informally with the Commission in March, 1912. An investigation was made which indicated that the business of the Shields River Valley had increased to a considerable extent since the Commission's Report No. 49, was made in Sept. 1911, and inasmuch as the supplementary complaint was informal, the question was taken up with the railway company by correspondence. As the season advanced, the prospects for an abundant crop in the Shields River Valley were very satisfactory, and an agreement was entered into between the Commission and the railway company to provide daily train service on this branch, commencing Sept. 16th, 1912, such daily service to consist of tri-weekly mixed (freight and passenger) and on the alternate days, straight passenger train, with the understanding that this service is to be given a fair trial, and its continuance to depend upon the amount of freight and passenger business handled between Livingston and Wilsall, the former being the main line terminus, the latter the end of the line. We trust that the showing will be such as will warrant a daily train through all seasons of the year, and the Commission feels that with the development of that section of the state, the business will rapidly increase, thereby assuring the continuance of the service which has been inaugurated.

NORTHERN PACIFIC RAILWAY—ELKHOURN BRANCH OPERATION OF.

Some years ago, the tracks of the Northern Pacific Railway Company from East Helena to Boulder were taken up, since which time the Northern Pacific has been, jointly with the Great Northern Railway, using the latter's tracks between these points, in order to reach Northern Pacific rails at Boulder, from which point a branch line extends to Elkhorn, a mining section.

On October 19th, 1912, the Northern Pacific Railway Company made application to the Commission to cease operation of that portion of the Elkhorn Branch between Elkhorn and Queen Siding, stating that the Elkhorn mines had closed down, and the residents of Elkhorn had for the greater part gone elsewhere. Some mining operations, however, were going on at Queen Siding, and it was proposed to operate train service only to that point.

Upon investigation, the Commission found the conditions to be as reported. All activity at Elkhorn mines had ceased, and only a few people still remained. Upon consideration of the conditions, and the fact that Elkhorn produced no business for the railway company, the request to cancel train service was granted, to take effect November 5th, 1912.

NORTHERN PACIFIC RAILWAY—GREGSONS. DISCONTINUED AS FREIGHT STATION.

For many years, it has been the practice of the Northern Pacific Railway Company to handle freight and passengers to Gregsons, a station 15.7 miles west of Butte on the Garrison-Butte line, but there is no depot, tracks or other facilities at that point, what little business done, being handled from the main line.

On October 19th, 1912, the railway company took up with the Commission the matter of discontinuing freight service but continuing to receive and discharge passengers, principally for the reason that it necessitated stopping freight trains at an undesirable place, and furthermore, the B. A. & P. which parallels the Northern Pacific at that point is equipped to receive and discharge freight more satisfactorily than the Northern Pacific.

An investigation was made by the Commission which determined that there was very little freight received and forwarded, and that same could, without inconvenience to the residents of that section, be quite as well routed via the B. A. & P. Accordingly, permission was granted as requested to discontinue Gregsons as a freight station on the line of the Northern Pacific.

LOTHROP, TEMPORARY AGENCY.

Refer to Page 46, annual report year ending Nov. 30th, 1911, which has reference to closing Lothrop station.

On Sept. 23rd, 1912, the Northern Pacific Railway Co., took up with the Commission the matter of establishing a telegraph office at Lathrop temporarily, on account of the increased movement of through freight, and while it was necessary to maintain telegraph service at that station, the railway company was willing to have the operator act in the capacity of agent, provided the Commission would agree to discontinue the agency when the railway company no longer required the services of this employe in the matter of handling train orders.

It was apparent that there was very little business either received or forwarded at that station, and the Commission accordingly authorized the agency opened, to be discontinued at the pleasure of the carrier.

GREAT NORTHERN RAILWAY—LONG'S SPUR—REMOVAL OF.

The Great Northern Railway Company made application on August 6th, 1912, for authority to take up the track known as Long's Spur located just east of Bridge 387, between Dover and Merino. This spur was laid during the construction period of the Billings & Northern line for Bower Bros., who were at that time running sheep in that section, but of late years, the track has not been used for commercial purposes. Our investigation showed that no business had been handled to or from this track during the past two years, and accordingly authority was granted the railway company to take up the rails.

Subject: Switching at Bainville.

Farmers State Bank of Bainville,

vs.

Great Northern Railway Company.

An informal complaint was made on October 24th, 1912, alleging that the railway employes were negligent in the matter of placing cars for loading and unloading at Bainville, and that serious inconvenience was resulting therefrom. Many cars of coal and lumber had been standing in the yard for the past eight days, and had not been placed on industry tracks or team tracks where they would be unloaded. Also that for the past ten days the elevators had been filled to their capacity and empty cars for loading with grain had not been spotted, although such empty equipment was on hand.

The matter was immediately taken up with the general superintendent of the Great Northern Railway Company with the result that under date November 7th, complainant advises that "Conditions have materially improved, which I assure you is appreciated."

Subject: Handling of Express.

Lambert Mercantile Co.,

vs.

Great Northern Express Company, and Boats Handling Express, Flathead Lake.

Complainant is engaged in the mercantile business at Polson, Mont., and complained that perishable shipments by express, particularly fruit, were being handled carelessly at Somers, where the business is transferred to the boat lines by the Great Northern Express Company, and in many instances held there an unreasonable length of time, resulting in deterioration to the contents of the packages.

An informal investigation was made into the conditions complained of, and the matter taken up with the carriers. Under date Sept. 2nd, complainant writes "We are glad to say that the troubles complained of are remedied for the present at least through your prompt and efficient action, which is greatly appreciated by us. We will advise you promptly of any recurrence of the trouble."

SEVILLE, CLOSING STATION.

Seville is a station on the main line of the Great Northern Railway on the Blackfeet Indian Reservation. An agency was established for the purpose of taking care of the business of the Reclamation Service engaged in that vicinity. Under date July 19th, 1912, the railway company made application to the Commission for permission to close the station upon discontinuance of the Reclamation camps about August 1st.

Investigation developed that the agency was established May 11th, 1911, and up to the present time the records showed that practically all of the business handled was for the Reclamation Service. At the time our inspector made his investigation, nearly everything had been removed and only a few laborers left to clean up the odds and ends.

The country tributary to Seville is not settled up and it was very apparent that the business transacted at that station would not warrant the maintenance of an agency. Accordingly the application of the railway company was granted and the station closed.

WILLIS, MONTANA, PASSENGER TRAIN SERVICE.

Refer to Report and Order of the Commission No. 48, Page 19, annual report year ending November 30th, 1911, in the matter of petition to compel the Oregon Short Line Railroad Company to stop its passenger trains in both directions at Willis, Montana.

This Report and Order is dated September 7, 1911, and requires that the defendant shall on and after the first day of October, 1911, stop at least one passenger train daily in each direction, at Willis, when there are one or more passengers to get on or off. This order was not complied with. The defendant did not refuse to abide by its terms, but as we understand it, upon advice of counsel, ignored the order on technical grounds. Accordingly, the matter was placed in the hands of the Attorney General on October 24, 1911, instructing that an action be brought against the said Oregon Short Line Railroad Company, for refusal or failure to stop its passenger trains at Willis, as directed by this Commission. Proceedings were commenced, and on February 19th, 1912, the O. S. L. R. R. Co., by its representative, called upon the Commission, and explained in considerable detail, why the company did not wish to stop its passenger trains at Willis, and at that time submitted a proposition which it had already taken up with the original complainants, viz., to construct a platform and provide buildings for the accomodation of passengers and freight at Mile Post 347, the object being to divide the distance between Willis and Glen, and thus bring the station to the nearest point to the main traveled county road. Defendant also agreed to move the hotel building and pavilion, the property of one Mrs. M. Reichle, from its present location to a point about 400 feet distant from the site of the new platform and buildings. All this work to be done at the expense of the railroad company, and when completed, one passenger train daily in each direction, would stop at the new station.

The plan was submitted by the Commission to the complainants, and readily accepted by them. As a matter of fact, this arrangement gives the people of the Willis section, better and more accessible facilities than they could have had at the former station site. The railroad company was authorized to pro-

ceed with this work, and it was agreed that upon completion of same, the action instituted, would be withdrawn.

These plans have been carried out, and the record closed June 20th, 1912.

Subject: Passenger Train Service.

Thompson Falls, Residents of,

vs.

Northern Pacific Railway Co.

Thompson Falls is a station on the main line of the Northern Pacific Railway in Sanders County, of which it is the county seat. An informal complaint was made February 21st, 1912, alleging that the passenger train service afforded that station was insufficient and inadequate, for the reason that the three east-bound trains scheduled to stop there, were bunched within a space of two hours and 23 minutes in the afternoon, viz., No. 228 at 1:20 P. M., No. 42 at 1.57 P. M., and No. 6 at 3:43 P. M. There was no east-bound morning train, and petitioners requested the service of Train No. 4, which is due at that station at 3:43 A. M. Rocky Mountain time.

Our investigation confirmed the schedules of trains as above, and notwithstanding that train No. 4 is due at a very early morning hour, it would apparently be patronized by people from the west who would transact their business, and return home the same day on No. 41 at 11:20 A. M., or No. 3 at 4:00 P. M. The request appeared to be a reasonable one inasmuch as Thompson Falls is the most important town in Sanders county, and the railway company agreed to, and did make train No. 4 a flag stop at that station, upon the Commission's request.

Subject: Sunday Train Service.

Madison County, Citizens of,

vs.

Northern Pacific Railway Co.

The Ruby Valley Branch of the Northern Pacific Railway extends from Whitehall in Jefferson County, to Alder in Madison County, a distance of 46.1 miles. The principal towns located on this branch are Twin Bridges, Sheridan and Alder.

The train service at the time this complaint was made in February, 1912, was "mixed" daily (except Sunday), and the petition asked that the service be made daily, alleging that the amount of business to and from points on this branch line, was sufficient to warrant their request, and citing particularly the inconvenience of not being able to receive or deliver mail from Saturday until Monday.

An investigation was made to determine the amount of business handled over this branch as compared with other similar branch lines in the state. It has developed that the revenue to the railway company on traffic destined to and received from points on said branch line for the four months ending December 31st, 1911, averaged $21,665.45 per month. This, of course, is not all branch line earnings. It includes the main line haul on both received and forwarded business, but comparing this with four other branch lines in Montana, it was found that the Ruby Valley branch was first on the list as a revenue producer. It therefore seemed to the Commission that the request was not an unreasonable one, and upon taking it up with the railway company, it was arranged to run a passenger train only, on Sundays, from Whitehall to Alder, and return, and in this way determine the necessity for the additional service. We are given to understand that the railway company will not receive any additional revenue for handling the United States mail seven instead of six days per week, but we feel that portion of the state is sufficiently populated, to make this Sunday train self sustaining.

The first Sunday was put on April 7th, 1912, leaving Whitehall at 8:25 A. M., after the arrival of No. 170 from Butte, and No. 173 from Logan (No. 3's connection), arriving at Alder 10:15 A. M., leaving Alder 5:00 P. M., arriving White-

hall 6:50 P. M., connecting with No. 169 at 7:00 P. M., for Butte.

Subject: Passenger Trains Backing Up.

Lewistown Commercial Club,

vs.

Chicago, Milwaukee & Puget Sound Railway Co.

At the time of this complaint, February 13th, 1912, it was the practice of the defendant to turn its passenger trains on the wye, a short distance before reaching the depot at Lewistown, and from said wye to the depot, the train was backed up. This operation was alleged to be dangerous, particularly at night, and complainant cited a recent instance wherein personal injury had been sustained by reason of a switch having been left wrong, and the rear of a passenger train striking cars standing on another track before the danger was discovered.

The matter was taken up with the officials in charge of operation, with the result that the practice referred to above, has been discontinued, and now passenger trains pull into the depot first, and turn on the wye after all passengers have been unloaded.

RIMROCK—CLOSING STATION.

The station of Rimrock is located on the Great Northern Railway in Yellowstone county. During the Fall months, there is considerable shipping of sugar beets into Billings. At other seasons of the year, there is very little outgoing freight, and at no time has the freight received, amounted to more than a few dollars per month.

The Great Northern Railway Company, on December 26th, 1911, requested authority of the Commission to close the station until such time as the need for an agent is more apparent. Investigation showed that practically no business had been transacted since November 25th, and accordingly, authority was given to discontinue the agency.

Subject: Station Facilities.

Franklin, Montana, Residents of,

vs.

Great Northern Railway Company.

Franklin is a station located on the Great Northern Railway in Fergus County, and on October 13th, 1911, complaint was made that a box car had been used for the purpose of a depot, but same was in a very bad condition, holes in the floor, no windows, stove or seats; in other words, it was not a suitable place for passengers waiting for trains. The complaint also attacked the manner in which freight was unloaded, same being scattered badly, instead of being unloaded onto the platform.

Franklin is a non-agency station. There is not sufficient business transacted with the railway company at that point to go to any great expense in providing station facilities, but in order to make it as comfortable as possible for people who were obliged to wait, the Commission requested the railway company to have this car suitably fitted up for the purpose of a waiting room, and also arrange so that train crews would unload their local freight on the platform instead of scattering it along the right of way.

Our request has been complied with, and complainants advise that they are satisfied for the present, and hope that their business in the near future will warrant better facilities than they now have.

PASSENGERS ON FREIGHT TRAINS.

The Chicago, Milwaukee & Puget Sound Railway Company, under date of February 14th, 1912, took up with the Commission for authority to permit sheriffs or their deputies to ride on freight or stock trains between points within the State of Montana, and at the same time not be obliged to extend this privilege to the general public.

An opinion was obtained from the Attorney General, in which he quoted from the decision of the Supreme Court in the case of JOHN v. NORTHERN PACIFIC RAILWAY COMPANY, 42 Mont., p 18, as follows:

> "In the absence of classification by the Legislature, the railroads may themselves make reasonable classification, but classification into public office holding and non-public office holding persons is clearly arbitrary, vicious, unreasonable, and therefore illegal and void."

The Supreme Court in this case recognized the right of the railway company to make reasonable classification for the transportation of passengers, and the Attorney General gave it as his opinion, that the railway company might make this character of classification, provided that the person so riding, was in possession of proper transportation, and traveling only upon official business.

The application of the railway company was accordingly granted.

Subject: Local Freight Service.

H. E. Marshall,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Complainant is engaged in general merchandise business at Martinsdale, Montana. Two complaints are involved, dated October 18th and November 15th, 1911, respectively, the first alleging that less than carload shipments from Martinsdale were held an unreasonable length of time at the initial station before being loaded and forwarded. The second complaint states that a carload of flour and sugar billed from Harlowton to Martinsdale remained at Harlowton from November 11th to 15th, on which latter date it had not gone forward.

It was only necessary to take this complaint up in an informal way with the operating department of the C. M. & P. S. Ry., and complainant advises that the service is now good; no fault to find.

Subject: Passenger Train Service Lodge Grass.

W. A. Petzoldt,

vs.

Chicago, Burlington & Quincy Railroad Company.

Complainant in this case is the superintendent of the Crow Indian Mission, and informally complained on January 11th, 1912, of the passenger train service at that station.

Investigation showed that under the present service, train No. 43, due at 2:43 A. M., and train No. 44, due at 9:49 P. M., were the only trains scheduled to stop at Lodge Grass. No night operator was employed, and consequently there was no way for passengers to ascertain, when these trains were late, when they would arrive. Complainant further stated that the depot was neither heated nor lighted after the day man went off duty, and under these conditions, it was thought that trains No. 41 and 42 which passed through Lodge Grass in the daytime, should stop when there was passengers to get on or off.

The investigation would indicate that there were a number of passengers to and from Lodge Grass daily, and the request appearing to be a reasonable one, the Burlington Company was asked to so arrange, and effective February 8th, trains No. 41 and 42 were scheduled to stop on flag.

Subject: Train Service.

Klein and Roundup, Montana, Residents of,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

Klein is a coal mining camp located at the end of a branch line connecting with the main line of the C. M. & P. S. Ry., at Roundup, Montana. Between these two points, the distance is about five miles; there is no regularly scheduled train service, the business being handled as a switching proposition; usually one train per day. The rules of the railway company would not permit of passengers riding on this train in either direction, consequently the only means of transportation between the two towns, was by wagon road, and to secure better train service and the privilege of carrying passengers, an informal petition was presented in August, 1911.

A preliminary investigation was made which indicated that the merchants and other business men of Roundup were more solicitous for this train service than were the people of Klein, ostensibly to increase their own trade. The request, of cours, should come from the people of Klein rather than from Roundup, and a complaint in accordance with our Rules of Practice, for the signature of some representative committee of Klein, was prepared in this office December 12th, 1911, but for some reason this complaint has not been returned to us nor have we been favored with a reply to our letters December 28th, 1911, and January 18th, 1912, asking to be advised of the attitude of the petitioners so that our records would be complete. We take it for granted that no further action is contemplated.

HARRISON AGENCY.

Referring to the Commission's Report Number 45, dated July 5th, 1911, in the matter of installing an agent at Harrison station in Madison County, on the Pony & Norris Branch of the Northern Pacific Railway. It will be noticed that an agency was established at that station September 1st, to continue until December 31st. 1911, after which date, if the business had not developed sufficiently to warrant the continuance of an open station, same would be closed.

Under date December 11th, the railway company took up with the Commission, the matter of discontinuing the agency, calling attention to the provisions of Report Number 45 as above. In the meantime, a petition was received from the residents of Harrison and vicinity, protesting against the contemplated action of the railway company, and an investigation was made by the Commission which developed that from Sept. 1st, when the agency was established, to December 31st, the revenue of Harrison station was approximately $14,000, or about $3500 per month. Further, that from one-third to one-half of the 1911 crop had not been shipped out, and was being held on account of market conditions. It was, therefore, reasonable to expect that the months of January, February and March would be equally as remunerative to the railway company as the preceding three months. Upon presenting these conditions to the defendant, it was agreed that the services of the agent were required, and the station will be continued until such time as the business handled shows for itself that the present facilities are unnecessary.

It is the opinion of this Commission that the territory contiguous to Harrison will continue to produce grain, hay, vegetables. etc., in large quantities, and that the agency which has been established, will become permanent.

Subject: Station Facilities.

Elso, Montana, and Vicinity, Residents of,

vs.

Chicago, Milwaukee & Puget Sound Railway Co.

Elso is a small station located on the main line of the C. M. & P. S. Ry., in Fergus County, and on January 26th, 1912, petition was received, praying that the railway company be required to provide a suitable, proper and sufficient building at that station, for the protection of freight, and for the accomodation of passengers waiting for trains.

Upon investigation, it was found that a platform 12x40 feet had been provided at Elso, and that nothing in the way of further improvements was contemplated for the present, or until such time as the business at that station was much heavier than now. An examination of the accounts showed that for six months ending January 31st, 1911, the total earnings of that station including charges on freight received, freight forwarded, and passenger business, amounted to only $99.17, or an average of a little more than $16.00 per month. This did not indicate that there was any great need for improved facilities, nor could the Commission insist that the railway company go to the expense of erecting a building, unless the records showed a reasonable volume of traffic to and from that point, which would necessitate what the law contemplates as "Reasonable Service." In other words, it would be manifestly unjust to require the railway company to spend several hundred dollars at a point where at the present time little or no business is being transacted. The Complainants were advised of these facts, and we take it that they have decided to withdraw the petition, inasmuch as we have not been favored with a reply to our letter of February 20th, citing the conditions as we found them to exist.

Subject: Passenger Train Service.

Belknap, Montana, Residents of, and Vicinity,

vs.

Northern Pacific Railway Co.

Belknap is a station on the main line of the Northern Pacific Railway in Sanders County, 6.2 miles west of Thompson Falls, the county seat. This petition asked that west-bound passenger train No. 3 due at Belknap at 4:11 P. M., be made a flag stop for the reason that without this service, parties having business in Thompson Falls, must take train No. 228 at 1:02 P. M., and remain at Thompson Falls until 7:30 A. M., the following day, for the local west-bound.

Train No. 3 is a through Chicago-Seattle train. Its time over the district between Paradise and Kootenai is fast, making but few stops. The Commission hesitated to burden this train with any unnecessary incumbrance, and it was arranged with the Northern Pacific Railway Company to stop at Belknap to let off passengers from Thompson Falls only. This arrangement will take care of the grievance set forth in the complaint, enabling petitioners to return from Thompson Falls at 4:00 P. M., same day. but it was not considered necessary nor advisable to make Belknap a flag stop for train No. 3 for passengers other than Thompson Falls, and the action taken has fully satisfied these complainants.

Subject: Passenger Train Service.

Dutton, Residents of and Vicinity,

vs.

Great Northern Railway Company.

This petition requested that through passenger trains Nos. 43 and 44 be required to stop at Dutton, and stated that the principal reason for making this request, was on account of Chouteau, which is an inland town, and the county seat of Teton County. Upon investigation, it was learned that the trains in question were now stopping at Collins, principally to accommodate Chouteau travel, and that the stage lines operated between Chouteau and Collins. The residents of Chouteau and that portion of Teton county, did not support the petition to stop at Dutton instead of Collins, and the Commission did not feel that inasmuch as these are through Kansas City-Seattle trains, they should be burdened with unnecessary stops. Therefore, if the people interested, preferred the stop at Collins rather than Dutton, which appeared to be the case, the argument that it was in the interest of Chouteau and the inland territory, was not, apparently, substantiated.

Upon explaning the situation to the original petitioners, the complaint was withdrawn December 28th, 1911.

Subject: Train Service.

Philipsburg, Montana, Residents of, et al.

vs.

Northern Pacific Railway Co.

Philipsburg is the county seat of Granite County and is situated on a branch line, connecting with the main line of the Northern Pacific Railway at Drummond, Montana. The distance from Drummond to Philipsburg is 25.8 miles. The train service at the time this complaint was made and now is "mixed daily except Sunday," and this petition prayed that the defendant be required to operate its train seven days a week, that is, Sundays in addition to the present service. Complainants state, "We believe we are entitled to such a train, as we have no way at present of communicating with or getting to the outside world from Saturday morning until Monday morning."

This matter was taken up informally with the railway company and it developed that the total earnings of the Drummond and Philipsburgh branch for the past year, after allowing credit for a reasonable pro rata of main line earnings on business originating at or consigned to points between Drummond and Philipsburg, amounted to $28,681.21. Against this, the expense of maintenance and operation, including taxes, was $31,569.76; that is, the expenses exceeded the earnings nearly $3,000.00, and we would state that the "expenses" made no allowance for proportion of interest on bonds.

It was found that the additional Sunday service requested would cost the railway company approximately $2500.00 per year, and on the assumption that there would probably be no more business additional, in the aggregate the total deficit would be increased to $5,500.00 per annum. It is true that branch line earnings are not always considered by themselves in the matter of determining the reasonableness of service rendered over such branch line. Branches, or "feeders," are a part of the whole and not infrequently industries located on branch lines furnish a tonnage, the earnings of which are comparatively slight for the transportation over the branch proper, but which yield to the carriers a remunerative main line haul. In the case of the Drummond and Philipsburg, there apparently was no such condition and the complainants were ad-

vised of these facts and invited to submit to the Commission any additional data which they might have in support of their request for improved train service.

No further action has been taken by the complainants and the Commission assumes that, in view of the facts as herein set forth, it has been decided not to present a formal petition.

STATION FACILITIES.

Section 19, Chapter 37, Laws of 1907, (Montana Railroad Commission Law), gives this Board the power to compel railroad companies. "* * * to provide and maintain suitable waiting rooms for passengers, and suitable rooms for freight and baggage at all stations."

It has been the experience of the Commission that public loading and unloading tracks, also stock yards, are quite as essential station facilities as are rooms for passengers and freight, but the former do not come within the province of the Board. Legislation is therefore and hereby recommended giving the Commission jurisdiction to order the construction of stock yards, or the installation of public loading or unloading tracks, (team tracks), when the necessity for such facilities has been established to the satisfaction of the Board.

TRACK CONNECTIONS, STATION HOUSES, ETC.

Title of Chapter 136, Session Laws 1909, reads: "An Act to regulate common carriers, and to provide for certain Appliances, Rules and Regulations looking to the safety of the traveling public and employes upon railway trains, and to confer upon the Railroad Commission of Montana, certain powers in relation thereto." Section 3 of said act provides.:

"The Railroad Commission of the State of Montana shall have power and authority, whenever the line of one railroad shall cross or intersect the railroad of another company or corporation to, after notice and hearing, order and compel the installation of suitable platforms and station houses. * * * And the expense and construction and maintenance of such station house and platform shall be paid by such corporations in such proportions as they may agree, and if they fail to

agree, as may be fixed by order of the Railroad Commission. Such corporations connecting by intersection as aforesaid shall also, when so ordered, after notice and hearing, by the Railroad Commission, unite and connect the tracks of said several corporations so as to permit the transfer from the track of one corporation to the other, of loaded or unloaded cars designed for transportation on both roads, provided, however, that no such union or connection shall be ordered except where and when necessary to properly serve the public."

It will be noted that the **Title** to this act does not specify "Track Connections," or "Station Houses," unless it can be considered that such can properly be classified as "Rules and Regulations," or "Certain Appliances;" as to this there is some question of doubt.

Again it will be seen that before the Railroad Commission can order connections made, the tracks of the carriers must be "Connecting by **intersection** as aforesaid." There is some difference of opinion as to what constitutes an "intersection." Does it apply to an over-head crossing?

In the matter of platforms and station houses, the law gives the Commission power to arbitrate the expense between the contending corporations in the event that they fail to agree; but the Commission has not the power of arbitrators in the matter of track connections.

The intent of the statute is perfectly clear, but in order that its application will not be encumbered by technicalities, we recommend that it be amended so as to show in the title, "Track connections," and "Station houses." As to tracks "intersecting," we recommend that the restriction be eliminated and authority given the Commission to order connection made at any point whether it be at a crossing or intersection or where the lines of the two companies parallel each other at a reasonable distance; the Board of Railroad Commissioners to be judge of what "A reasonable distance," is, to be determined of course upon the physical, traffic and other conditions. The necessity of the connection "To properly serve the public," to be determined after notice and hearing, as our present law provides.

In the event that an amicable division of the expense of construction, maintenance, etc., of such connecting tracks can-

not be agreed upon by the parties thereto, then this Commission should have the authority to say what that division shall be; in the same manner as it now has jurisdiction over the expense of station houses and platforms.

We also recommend that Chapter 136, shall provide a penalty clause for the violation of its provisions.

PART II.

TARIFFS, RATES AND CHARGES.

BEFORE THE RAILROAD COMMISSION OF MONTANA

KING AND QUEEN MINING COMPANY,

Complainant,

vs.

CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY AND NORTHERN PACIFIC RAILWAY COMPANY,

Defendants.

IN THE MATTER OF Alleged Excessive and Discriminatory Freight Rate on Low Grade Ore from Ashmore, Montana, to East Helena, Montana.

HEARINGS, April 30th and June 28th, 1912.
COMPLAINT DISMISSED, June 28th, 1912.

REPORT OF THE COMMISSION.

Number 54A.

REPRESENTED:

Complainants	By John G. Brown, Counsel.
	" Hon. John M. Evans, Counsel.
Defendants	By F. J. Firman, Counsel for C. M. & P. S. Ry.
	" Geo. F. Shelton, Counsel for C. M. & P. S. Ry.
	" E. M. Hall, Counsel for N. P. Ry.
	" A. J. Hillman, D. F. & P. A., C. M. &. P. S. Ry.
	" W. H. Merriman, D. F. & P. A., N. P. Ry. Co.
Commissioners	Stanton and Morley—April 30th.
	Stanton, Morley and Boyle—June 28th.

Complainant is a corporation engaged in mining near Ashmore, Montana, and by its petition dated March 14th, 1912, alleged that the freight rate on ore from its mines to the smelter at East Helena, Montana, was unreasonable and prohibitive to the operation of its property. Therefore prayed that defendants be required to establish and put in force and effect for the future, a lower rate or rates on this commodity.

Ashmore is located on the main line of the Chicago, Milwaukee & Puget Sound Railway, 68.5 miles west of Missoula, and such ore as had already been shipped by the complainant, was hauled by the defendant C. M. & P. S. Ry. Co., to Butte, Mont., where it was turned over to the defendant N. P. Ry. Co.,

for movement to destination, East Helena. The distance and freight rate through Butte being:

(Rates named apply on ore not over $25.00 per ton valuation.)

Ashmore to Butte, C. M. & P. S.,	192.9	miles, rate per ton	$1.95
Butte to East Helena, Nor. Pac.,	140.1	miles, rate per ton	1.00
TOTAL	333.0	miles, rate per ton	$2.95

Complainant alleged that this business should move through Missoula Junction, instead of through Butte, thus shortening the route and giving the longer haul to the Northern Pacific, as follows:

Ashmore to Missoula, C. M. & P. S.	68.5	miles.
Missoula to East Helena, Nor. Pac.	124.0	"
TOTAL	192.5	"

There were, however, no rates based on Missoula, except the combination of locals making $3.35 per ton, which of course was prohibitive, and, as will be noted, is higher than the rate via Butte, although the distance through Missoula is less by 140.5 miles. This $3.35 is made up of C. M. & P. S. $1.95, Northern Pacific $1.40. It will be observed that the C. M. & P. S. rate Ashmore to Missoula of $1.95 is the same as to Butte, although the latter involves an additional haul of 124.4 miles. In other words, there was no rate Ashmore to Missoula, and the Butte rate applied as a maximum.

At the hearing April 30th, the C. M. & P. S. Co., through its representative, offered to publish rate of $1.05 per ton on this grade of ore, Ashmore to Missoula, which plus Northern Pacific rate of $1.40, would make $2.45 per ton through. Counsel for complainant asked for a continuance of the case in order that he might confer with his client, which was granted. At the hearing June 28th, counsel for both parties stipulated as follows:

"It is hereby stipulated and agreed by and between the Complainant, King & Queen Mining Company, and the Chicago, Milwaukee & Puget Sound Railway Company, defendant, that the complaint herein be dismissed on consideration of the establishment by the defendant, Chicago, Milwaukee & Puget Sound Railway Company of a rate of one dollar and five cents from Ashmore, Montana, to Missoula, Montana."

Thereupon the complaint was dismissed and the case concluded.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena Montana, July 3rd, 1912.

BEFORE THE RAILROAD COMMISSION OF MONTANA

CAIRD ENGINEERING WORKS,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY CO., CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY CO.

Defendants.

IN THE MATTER OF Alleged Unreasonable, Unjust and Discriminatory Rates, Both Carloads and Less Than Carloads and Less Than Carloads, on Rough Castings From Helena, Montana, to Lewistown, Montana.

HEARING, October 10th, 1912.
DECIDED, November 12th, 1912.

REPORT AND ORDER OF THE COMMISSION.

Number 56.

Hearing in the above entitled cause was regularly held by the Commission in its offices at Helena, Montana, October 10th, 1912.

REPRESENTED:

Complainants	By Chas. S. Caird,
Northern Pacific Ry. Co.	By W. H. Merriman, D. F. & P. A.
Chicago, Milwaukee & Puget Sound Sound Ry. Co.	By A. J. Hillman, D. F. & P. A. " F. J. Furman, Counsel.

Complainant, the Caird Engineering Works is engaged in the manufacture of machinery at Helena, and alleges that the rate of 50 cents exacted and in force from Helena to Lewistown, on castings, in carloads and less than carloads, is unreasonable, unjust and discriminatory, and prays for the establishment of a rate of 20 cents in carloads, and 30 cents in less carloads.

Helena-Lewistown business is handled over the lines of the Northern Pacific Railway and the Chicago, Milwaukee & Puget Sound Railway via Lombard, Montana. The distance Helena to Lombard via the Northern Pacific Railway is 53 miles and from Lombard to Lewistown via the C. M. & P. S. Ry 155 miles, or a through distance of 208 miles.

From the distributing centers of Montana, the carriers have for a number of years, carried rates on the first four classes, governed by Western Classification, that are lower than rates for like distances under the general distance tariffs. The fourth class rates under this special scale of distributing rates are often lower than the fifth class rates under the general distance tariff. In this case the fourth class distributing rate is 50 cents; the 5th class General Distance tariff is 52 cents. The rule is that the fourth class distributing rates shall not be exceeded on 5th class freight. In consequence of this condition, there exists the same rate of 50 cents on castings in carloads and less than carloads.

In the states of North Dakota, Minnesota and Wisconsin intra or interstate, the defendants transport castings, carloads, a distance of 208 miles for 22 cents, and in less than carloads for 33 cents. In many instances the 4th and 5th class rates are lower from terminal points than those quoted above. At manufacturing points in Minnesota and Wisconsin, the problem of cost in manufacturing is alleviated considerably in that raw material such as pig iron, coke, etc., is found either at hand or in comparatively contiguous territory, while the manufacturer at Helena, or other Montana points is required to import such raw material from other states. Obviously the manufacturing conditions in the states mentioned, are much more favorable than in Montana, and in addition, the carriers are favored with but little revenue on the raw material in comparison with that derived from the transportation of such material to Montana.

From St. Paul or Duluth, manufacturing points easily accessible to supplies of raw material, castings are transported to Lewistown, a distance of 979 miles for 70 cents in carloads, and 1.18 in less carloads. The caroad rate is 1.43 cents per ton mile while the less carload rate is 2.4 cents as against the rate in carloads or less Helena to Lewistown of 4.8 cents per ton mile. In transporting freight from St. Paul to Lewistown, it is necessary to traverse nearly 400 miles of Montana territory, a distance equal to about 40 per cent of the total mileage. These rates cannot, we believe, be considered to be low. They are higher by from 50 to 100 per cent, than the average ton mile revenue of either the Northern Pacific or the C. M. & P.

S. Rys., while the rate of 50 cents complained of from Helena to Lewistown figures almost 500% of the average ton mile revenue of the lines named.

In addition to what has already been said, we have in mind rates from Helena to Lewistown on certain other commodities such as brick, sewer pipe, drain tile, etc., all of which are very materially lower in carloads than 50 cents, while castings are practically an indestructible commodity. Having, therefore, the circumstances and conditions fully in mind, we are of the opinion and so hold, that the defendants' rate of 50 cents on carloads is unreasonable in that it exceeds 26 cents per 100 pounds, and that 50 cents on less carloads is unreasonable in that it exceeds 38 cents per 100 pounds.

Order.

IT IS THEREFORE ORDERED that the defendants shall publish and put in force for the future, same to become effective twenty days after the receipt by said defendatns of a certified copy of this Report and Order, for the tansportation of castings from Helena, Montana to Lewistown, Montana, via Lombard, in carloads, minimum 40,000 pounds, rate of 26 cents per cwt., and in less than carloads 38 cents per cwt., said rates to remain in effect until the further order or approval of this Commission.

The Secretary is directed to serve upon the defendants hereto, a certified copy of this Report and Order.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena, Montana, November 12th, 1912.

DEMURRAGE.

Refer to the Commission's Annual Report year ending November 30th, 1910, pages 103-112, on the above subject. Since that time demurrage rules and regulations as per Report and Order No. 39 have remained in effect on Montana intrastate business.

To become effective September 1st, 1912, the American Railway association, on May 15th, 1912, adopted a revised set of the National Car Demurrage Rules, which was indorsed by the Interstate Commerce Commission and recommended that same be made effective on interstate transportation throughout the country, subject to the right and duty of the Commission to inquire into the legality and reasonableness of any rule or rules which may be made the subject of complaint.

The Railroad Commission of Montana was requested to adopt the new rules in their entirety as applying on Montana intrastate movements. This, however, we declined to do, for the reason that while the new rules contained some amendments calculated to remove ambiguity and to which no objection could be raised, the free time for unloading ore, concentrates, lumber, stulls, lagging, coal, coke lime and lime rock would thereby be reduced from seventy-two to forty-eight hours. The new rules also provided for only five days' credits under the average plan this to include Sundays and holidays, whereas the present rule allows seven days, Sundays and holidays excepted. This reduction of credits was based on Section B of Rule 9 and proposed to eliminate the distinction as between classes of equipment.

At a meeting of the Commission and Manager Mills of the Montana Demurrage Bureau July 25th, it was agreed that the rules and regulations as adopted by the Bureau at its meeting July 24th at Butte, Montana, would be approved as applying within this state, said rules and regulations to supersede the code set forth in this Commission's Report and Order No. 39, dated Sept. 20th, 1910.

The new Montana Rules follow:

MONTANA DEMURRAGE BUREAU.

Rules Adopted By the Members of the Montana Demurrage Bureau at Their Meeting Held at Room 18 Silver Bow Block, Wednesday July 24th. 1912, at 10 A. M.

RULE 1.

Cars Subject to Rules.

Cars held for or by consignors or consignees for loading, unloading, forwarding directions or for any other purpose, are subject to these demurrage rules, except as follows:

(A) Cars loaded with live stock.

(B) Empty cars placed for loading coal at mines or mine sidings, or coke at ovens.

(C) Empty private cars stored on carrier's or private tracks, provided such cars have not been placed or tendered for loading on the orders of a shipper.

Note—Private cars, while in railroad service whether on carrier's or private tracks, are subject to these demurrage rules to the same extent as cars of railroad ownership. (Empty private cars are in railroad service from the time they are placed by the carrier for loading or tendered for loading on the orders of a shipper. Private cars under lading are in railroad service until the lading is removed and the cars are regularly released. Cars which belong to an industry performing its own switching service are in railroad service from the time they are placed by the industry upon designated interchange tracks and thereby tendered to the carrier for movement. If such cars are subsequently returned empty they are out of service when withdrawn by the industry from the interchange; if returned under load railroad service is not at an end until the lading is duly removed).

(D) Cars loaded or to be loaded with wool. (Applies only on Montana State Traffic.)

RULE 2.

Free Time Allowed.

(A) Forty-eight hours (2) days free time will be allowed for loading or unloading on all commodities.

(B) Twenty-four hours (1 day) free time will be allowed:

1. When cars are held for switching orders.

Note—Cars held for switching orders are cars which are held by a carrier to be delivered to a consignee within switching limits and which when switched become subject to an additional charge for such switching movement. If a consignee wishes his car at any break up yard or hold yard before notification and placement, such car will be subject to demurrage. That is to say, the time held in the break-up yard will be included within the 48 hours of free time. If he wishes to exempt his cars from the imposition of demurrage he must either by general orders given to the carrier or by specific orders as to incoming freight notify the carrier of the track upon which he wishes his freight placed, in which event he will have the full 48 hours free time from the time when the placement is made upon the track designated.

2. When cars are held for reconsignment or reshipment in same car received.

Note—A reconsignment is a privilege permitted by tariff under which the original consignee has the right of diversion. In event of the presence of such a privilege in the tariff 24 hours free time will be allowed for the exercise of that privilege by the consignee. A reshipment under this rule is the making of a new contract of shipment by which under a new rate the consignee forwards the same car to another destination.

3. When cars destined for delivery to or for forwarding by the connecting line are held for surrender of bill of lading or payment of lawful freight charges.

4. When cars are held in transit and placed for inspection or grading. When cars loaded with grain or hay are so held subject to recognized official inspection and such inspection is made after 12 o'clock noon, 24 hours (1 day) extra will be allowed for disposition.

5. When cars are stopped in transit to complete loading, to partly unload or to partly unload and partly reload (when such privilege of stopping in transit is allowed in the tariffs of the carriers).

6. On cars containing freight in bond for Custom entry and Government inspection.

(C) Cars containing freight for transshipment to vessel will be allowed such free time at the port as may be provided in the tariffs of the carriers.

Exceptions—

On Montana State Traffic.

Seventy-two hours (3 days) free time will be allowed for unloading, Ore Concentrates, Lumber, Stulls, Lagging, Coal, Coke, Lime, Lime and Silica Rock.

On Interstate Traffic—Applies Only At Butte and East Helena, Montana.

Seventy-two hours' (3 days') time will be allowed for unloading Ore, Concentrates, Lumber, Stulls, Lagging, Coal, Coke, Lime and Lime Rock.

RULE 3.

Computing Time.

Note—In computing time, Sundays and legal holidays (national, state and municipal) will be excluded. When a legal holiday falls on Sunday, the following Monday will be excluded.

(A) On cars held for loading, time will be computed from the first 7 a. m., after placement on public delivery tracks (See rule 6—Cars for Loading).

(B) On cars held for orders, time will be computed from the first 7 a. m., after the day on which notice of arrival is sent to consignee.

(C) On cars held for unloading, time will be computed from the first 7 a. m., after placement on public delivery tracks and after the day on which notice of arrival is sent to consignee.

(D) On cars containing freight in bond, time will be computed from the first 7 a. m., after permit to receive goods is issued to consignee by the United States Collector of Customs.

(E) On cars to be delivered on interchange tracks or industrial plants performing their own switching service, time will be computed from the first 7 a. m., following actual or constructive placement on such interchange tracks until returned thereto. See Rule 4 (Notification) and Rules 5 and 6 (Constructive Placement). Cars returned loaded will not be recorded released until necessary billing instructions are given.

Note—'Actual Placement' is made when a car is placed in an accessible position for loading or unloading at a point previously designated by the consignor or consignee.

Exception—On Montana State Traffic.

Note—In computing time, June 13th at points where observed as a holiday will be excluded.

RULE 4.

Notification.

(A) Consignee shall be notified by carrier's agent in writing or as otherwise agreed to by carrier and consignee, within twenty-four hours after arrival of cars and billing at destination, such notice to contain point of shipment, car initial and numbers and the contents, and if transferred in transit, the initials and numbers of the original car. In case car is not placed on public delivery track within twenty-four hours after notice of arrival has been sent, a notice of placement shall be given to consignee.

(B) When cars are ordered stopped in transit the party ordering the car stopped shall be notified upon arrival of cars at point of stoppage.

(C) Delivery of cars upon private or industrial interchange tracks, or written notice to consignee of readiness to so deliver, will constitute notification thereof to consignee.

(D) In all cases where notice is required, the removal of any part of the contents of a car by the consignee shall be considered notice thereof to the consignee.

RULE 5.

Placing Cars for Unloading.

(A) When delivery of cars consigned or ordered to any other than public delivery tracks, or to industrial interchange tracks cannot be made on account of the act or neglect of the consignee, or the inability of the consignee to receive, delivery will be considered to have been made when the cars were tendered. The carrier's agent must give the consignee written notice of all cars he has been unable to deliver because of the condition of the private or interchange tracks or because of other conditions attributable to consignee. This will be considered constructive placement. See rule 4 (Notification).

(B) When delivery cannot be made on specially designated public delivery tracks on account of such tracks being fully occupied, or from other cause beyond the control of the carrier, the carrier shall notify the consignee of its intention to make delivery at the nearest point available to the consignee, naming the

point. Such delivery shall be made unless the consignee shall before delivery indicate a preferred available point, in which case the preferred delivery shall be made.

RULE 6.

Cars for Loading.

(A) Cars for loading will be considered placed when such cars are actually placed, or held on order of the consignor. In the latter case, the agent must give the consignor written notice of all cars which he has been unable to place because of conditions of the private tracks, or because of other conditions attributable to the consignor. This will be considered constructive placement. See rule 3, Section A (Computing Time).

(B) When empty cars, placed for loading on orders, are not used, demurrage will be charged from the first 7 a. m., after placing or tender until released with no time allowance.

RULE 7.

Demurrage Charges.

After the expiration of the free time allowed, a charge of $1.00 per car per day or fraction of a day will be made until the car is released.

Exception on Montana State Traffic.

After the expiration of the free time allowed, a charge of $1.00 per car per day or fraction of a day will be made for the first five (5) days after which a charge of $2.00 per car per day shall be made.

RULE 8.

Claims.

No demurrage charges shall be assessed under these rules for detention of cars through causes named below. If through error, demurrage charges are assessed or collected under such conditions, they shall be promptly canceled or refunded by the carrier.

Causes.

(A) Weather Interference.

1. When the condition of the weather during the prescribed free time is such as to make it impossible to employ men or teams in loading or unloading or impossible to place freight in cars, or to move it from cars without serious injury to the freight, the free time shall be extended until a total of 48 hours free

from such weather interference shall have been allowed.

2. When shipments are frozen while in transit so as to prevent unloading during the prescribed free time. This exemption shall not include shipments which are tendered to consignee in condition to unload. Under this rule consignee will be required to make diligent effort to unload such shipments.

3. When because of high water or snowdrifts, it is impossible to get to cars for loading or unloading during the prescribed free time.

This rule shall not absolve a consignor or consignee from liability for demurrage if others similarly situated and under the same conditions are able to load or unload cars.

(B) Bunching.

1. Cars for Loading.

When by reason of delay or irregularity of carrier in filling orders, cars are bunched and placed for loading in accumulated numbers in excess of daily orders, the shipper shall be allowed such free time for loading as he would have been entitled to had the cars been placed for loading as ordered.

2. Cars for Unloading or Reconsigning.

When as a result of the act or neglect of any carrier, cars destined for one consignee at one point are bunched at originating point, in transit or at destination, and delivered by the carrier line in accumulated numbers in excess of daily shipments, the consignee shall be allowed such free time as he would have been entitled to had the cars been delivered in accordance with the daily rate of shipment. Claim to be presented to carrier's agent within fifteen (15) days.

(C) Demand of Overcharge:

When the carrier's agent demands the payment of transportation charges in excess of tariff authority.

(D) Delayed or Improper Notice by Carrier:

Note—When notice has been given in substantial compliance with the requirements as specified by these rules, the consignee shall not thereafter have the right to call in question the sufficiency of such notice unless within forty-eight hours from 7 a. m., following the day on which notice is sent, he shall serve upon the delivering carrier a full written statement of his objections to the sufficiency of such notice.

1. When claim is made that a mailed notice has been delayed the postmark thereon shall be accepted as indicating the date of the notice.

2. When a notice is mailed by carrier on Sunday, a legal holiday, or after 3 p. m., on other days (as evidenced by the postmark thereon), the consignee shall be allowed five hours additional free time, provided he shall mail or send to the carrier's agent, within the first twenty-four hours of free time, written advice that the notice had not been received until after the free time had begun to run; in case of failure on the part of the consignee so to notify carrier's agent no additional free time shall be allowed.

(E) Railroad Errors which prevent proper tender or delivery.

(F) Delay by United States Customs—Such additional free time shall be allowed as has been lost through such delay.

RULE 9.

Average Agreement.

When a shipper or receiver enters into the following agreement, the charge for detention to cars provided for by Rule 7 on all cars held for loading or unloading by such shipper or receiver shall be computed on basis of the average time of detention to all such cars released during each calendar month, such average detention to be computed as follows:

(A) A credit of one day will be allowed for each car released within the first 24 hours of free time. A debit of one day will be charged for each 24 hours or fraction thereof that a car is detained beyond the first 48 hours of free time. In no case shall more than one days' credit be allowed on any one car and in no case shall more than seven (7) days' credit be applied in cancelation of debits accruing on any one car.

(B) At the end of the callendar month the total number of days credited will be deducted from the total number of days debited, and $1.00 per day charged for the remainder. If the credits equal or exceed the debits, no charge shall be made for the detention of the cars, and no payment will be made to shippers or receivers on account of such excess of credits, nor shall the credits in excess of the debits of any one month be considered in computing the average detention for another month.

(C) Credits earned on cars belonging to one class

of equipment shall not be used in offsetting debits accruing on cars belonging to a different class of equipment. For the purpose of applying this provision, cars shall be deemed to consist of two classes: (1) Box cars, including refrigerator cars; (2) freight cars of all other descriptions.

(D) A shipper or receiver who elects to take advantage of this average agreement shall not be entitled to cancellation or refund of demurrage charges under Section A, paragraphs 1 and 3, or Section B, of Rule 8.

(E) A shipper or receiver who elects to take advantage of this average agreement may be required to give sufficient security to the carrier for the payment of balances against him at the end of each month.

Exception on Montana State Traffic.

When a shipper or receiver enters into the following agreement, the charge for detention on all cars held for loading or unloading by such shipper or receiver shall be computed on basis of the average time of detention to all such cars during each calendar month, such average detention to be computed as follows:

Agreement.

To.....Railroad Company:

In accordance with the terms of Rule 9 of the Montana Demurrage Bureau reading as follows: (Insert Rule 9 in Agreement). I (or we) do expressly agree with the above named railroad company that I (or we) will make prompt payment of all demurrage charges accruing in accordance with such rule during the continuance of this agreement on cars held for loading or unloading by me (or us) or on my (or our) account at.....station of the above named railroad company. This agreement to take effect..... 19.., and to continue until terminated by 30 days written notice to the railroad company.

Approved and accepted by and on behalf of the above named railroad company by.....

TO THE INTERSTATE COMMERCE COMMISSION, WASHINGTON, D. C.

Protest By the Board of Railroad Commissioners of the State of Montana, on Behalf of the Shippers and Receivers of Freight of this State, Against Western Classification Number 51, Issued December 30th, 1911, to Become Effective February 15th, 1912, and Which Now Stands Suspended By Your Honorable Board Until June 14th, 1912.

An open investigation was held before this Commission at Helena, April 10th and 11th, to consider and discuss with the commercial bodies of the State, and the representatives of the various railroads, the numerous advances, changes in rules, etc., as contemplated in Classification Number 51, at which time, some forty interested persons gave their views in detail, as the Classification affected their particular line of business. Representatives of the railroads present had little to offer in the way of explanation, stating that their data on the subject was at that time being used at similar hearings elsewhere, and upon the suggestion of Mr. F. D. Burroughs, General Freight Agent of the Chicago, Milwaukee & Puget Sound Railway Company, all lines represented at the investigation, requested the Board to accept on their behalf such reasons as were advanced by Mr. Fyfe, Chairman Western Classification Committee, for the advances and changes provided in Classification No. 51, which reasons were then in the hands of the Commission, having been furnished in reply to our inquiries for detailed information.

The following objections are hereby respectfully submitted for your consideration in the final determination of this matter, and we would state that only the more important items have been taken up in this report; minor changes and items on which advances are proposed but which do not, apparently, affect the State of Montana, are not embodied herein.

OBJECTIONS:

Rule 13-16—Minimum Charge: We see no necessity for this being provided for in the Classification, in view of Special Class and Commodity tariffs car-

rying their own rules, which invariably are lower than 100 pounds at first class rate. The present plan is satisfactory, and no reasons have been given justifying the proposed change. We look upon it as a primary move towards elimination of the present charges.

Rules 18-22—Maximum L. C. L. Charges: It is the concensus of opinion of shippers and receivers of freight, that rules 15 and 16-B of Classification Number 50, afford ample protection to carriers in the application of carload rates as maximum on L. C. L. consignments. Section 2, Rule 22, is objectionable on account of leaving it entirely optional with the railroad company as to whether they will or will not load or unload L. C. L. freight of any character. The rule is so broad that it would in all probability have the effect of requiring shippers or consignees to handle practically all L. C. L. shipments, depending upon the attitude of the carrier's employes.

Rule 27—Dunnage: The shippers of this state particularly those engaged in the agricultural implement and machinery business, vigorously oppose this change, whereby the allowance of 500 pounds for racks, blocks, supports, etc., is eliminated. It is felt by the Montana handlers of freight loaded on flat or gondola cars, that the allowance of 500 pounds now being made, is none too liberal. We are of the opinion that such blocking as referred to in this rule, should be considered as part of the equipment; if not, the vehicle is not adapted for the transportation of the commodity. We see no more reason why charges should be assessed in such cases, than for temporary doors necessary in cars to make them safe for grain loading.

Rules 30-31—Protection of Perishable Carload Freight: Apparently the intent of these rules is to relieve the carrier from responsibility for the protection of perishable property in transit when not in charge of an attendant, thus making the shipper or receiver responsible for weather conditions, over which, of course, he has no control.

Acids—Page 69, Item 1, Boracic; Page 69, Item 13, Oxalic—Dealers in these commodities in Montana, usually handle the articles packed in cartoons or tins in L. C. L. lots. The ratings on packages of this description have been advanced from second to first class. Boracic acid costs on the Chicago market, 9½ cents, and Oxalic acid 8 cents per pound. These acids are in powder or crystal form. They are not perishable, and are of common use. There does not appear

to be anything in the character of these articles to warrant any advance in rating when packed in the manner described. The proposed change in Classification means an advance of approximately 20 per cent from Chicago to Montana common points. In this connection, it is interesting to note that carbolic acid, which costs wholesale, 17 cents per pound in Chicago, is subject to second class rate.

Advertising Matter—Paper or Paper Board, in Bundles or Crates, L. C. L., Page 70, Item 12.—Advanced from first to one and one-half times first, 50 per cent. All other class of advertising matter takes second class. The plain paper board unprinted, takes second class. Advertising matter as a rule has little intrinsic value, and is seldom, if ever sold, being distributed free. It would not, therefore, seem as though the commodity were one which would bear one and one-half times first class rate, even when shipped in bundles or crates; and if damaged in transit, there would be only slight monetary loss. Practically all advertising matter distributed in Montana, is shipped from St. Paul, Chicago, and other eastern cities, which on account of the distance, makes it quite expensive when delivered here, and has a tendency to restrict advertising in this state.

Agricultural Implements, Hand—Pages 70, 71, 72—Scythe stones and Post Hole Diggers have been eliminated from this heading. This has the effect of prohibiting the mixture of these articles with hand implements. They are properly hand implements, especially the post hole diggers. To eliminate these articles means they will have to be shipped in less carload lots from the east, it being impossible to handle carloads.

In addition to the change in mixture, the rating on scythe stones is advanced from third to first class, an advance not warranted by value of the goods.

Decoy Birds, L. C. L.—Page 89, Item 26.—Rating has been advanced from second to first class. This advance does not appear to be warranted by the value of the articles or for other reasons. These articles are shipped from the east to Montana, and the advance in rate from Chicago to Montana Common points, would be from $2.40 per cwt., $2.85 per cwt., or approximately 20 per cent.

Bags, Paper—Page 91—Rating on crinkled paper bags has been advanced on L. C. L. lots from second

to first class which means an advance of approximately 20 per cent from St. Paul to Montana Common Points.

In addition to this, bags of all descriptions, are deprived of privilege of mixing with wrapping paper, etc., in carloads. Commodity rates are in effect from Eastern points to Montana, which permit of mixture of bags with paper. If the change in Classification is approved, it will be but a question of time when commodity mixture will be changed to conform with the Classification.

Candy and Confectionery—Page 108, Item 4—The change made in this item has the effect of placing high grade and low grade in the same class, viz., second in L. C. L. lots, the advance in rating being from third to second class on the cheaper grades, while the high priced candy rating is reduced from first to second class.

This change, it is claimed, will result in the payment of many thousands of dollars more per year by Montana consumers.

The advance on cheap candy from Chicago to Montana common points, would be from $1.98 per 100 pounds to 2.40 per cwt., or 42 cents per cwt. From Spokane to Helena, the advance would be from $1.08 per cwt., to $1.31 per cwt., or more than 20 per cent. In Montana, there is scarcely any cheap candy manufactured. It is all shipped into the state.

Canned Goods—Pages 108, 149—The changes proposed on these goods contemplate the elimination of mixture of canned fruits with canned vegetables. At the present time, such mixtures are provided for both in Classification and Commodity tariffs. The change in Classification would be but a forerunner for a similar change in commodity tariffs.

Montana is a sparsely settled state, and the mixture of canned fruit and vegetables is necessary perhaps to a much greater extent than in other communities. In the densely populated Official Classification territory, it is still possible to ship such mixed cars, and it is difficult to understand why such privilege should be denied to such communities as Montana. This change it is estimated, would ultimately result in an increased price of goods to consumers, as straight cars of fruit and vegetables could be handled only by large jobbers.

Clam Juice and Clam Broth—Page 118, Item 12—The less than carload rating has been advanced from fourth to third class on clam juice; and the mixture

of clam juice and broth with canned fish carloads, has been eliminated.

These changes are detrimental to Montana receivers and shippers. The reasons given for protest against changes in mixture of canned fruits and vegetables will also apply to clam broth and juice. No reasons appear for advancing the L. C. L. rating on clam juice.

Grape Juice, Unfermented—Page 164, Item 6—The change made in Classification does away with the mixing of Grape Juice, unfermented, with other fruit juices, latter being provided for on Page 190, Item 13. Like the elimination of canned fruit and vegetable mixtures, this change is vigorously opposed. No reason whatever appears for confining the movement of this commodity to straight carloads.

Machinery, Machines, and Parts of Same—Page 197, Item 9—Bean or Pea Cleaners, Graders, Pickers, Picking and Sorting Tables or Polishers; formerly these articles were carried in the Classification under the heading of Agricultural Implements, other than hand, and were permitted the privilege of mixing with such implements. They are handled in Montana by Agricultural Implement dealers and should properly come under the heading, "Implements." Without the privilege of mixing with Implements, they would have to move into Montana in less carloads.

The present rate on these articles in carloads from Chicago to Montana Common Points is $1.33 per 100 pounds. By taking the articles from the Agricultural implement grouping, they will be deprived of not only the privilege of mixing with implements, but also the commodity rate named, and would be subject to Class "A" rate from Chicago, viz., $1.38 per cwt., if it were possible to handle straight carloads.

The bean and pea industry in Montana is in its infancy; it has been but recently that Montana people engaged in the business, and every assistance is needed. Any advance in rates on this class of implement is vigorously opposed.

Green Pea Power Hullers—Page 204, Item 9—Same changes as on Bean Cleaners, etc., cited above. Objected to for same reasons.

Mop Handles—Page 218, Items 5 and 6—Wooden Mop Handles, with or without heads, in bundles, in Classification No. 50, subject to third class rates, L. C. L. in boxes or crated, L. C. L. 4th class. New

classification provides for third class rates on wooden mop handles, in boxes, bundles or crates; and on may handles, with metal holders in bundles. L. C. L. 2nd class; in boxes or crates, L. C. L. 3rd class.

Mop handles, under Classification No. 50 could be shipped in mixed carloads with woodenware, at 4th class rates (see Item 9, Page 192), (Classification No. 50) but under Classification No. 51, mixture with woodenware is eliminated. Class "A" rate is provided on wooden mop handles, without metal holders, minimum weight 36,000 lbs., and with metal holders, class "A" minimum weight 30,000 lbs. The two kinds of handles cannot be mixed in the new classification. All changes made in ratings and mixtures of these articles are very objectionable. They mean an absolute advance in charges on handles to all Montana points from the east. The 4th class rate, St. Louis to Montana common points, is $1.60; an advance to 3rd class would make the rate $1.93, or an an advance of more than 20 per cent; an advance from 3rd class $1.93 to 2nd class $2.35 means also more than 20 per cent advance.

Woodenware, Cheese Boxes (Cheese Hoops)—Page 102, Item 5—In addition to the elimination of Mop handles from mixture with woodenware, cheese boxes (cheese hoops) have also been eliminated from such mixture; the carload rating has been advanced from 4th class, minimum weight 15,000 lbs., to 2nd class, minimum weight 10,000 lbs. On L. C. L. lots, rating on the articles in crates has been advanced from 2nd to 1st class.

The elimination of this article from the heading "Woodenware" means either discontinuing their use or the payment of 1st class rates. The present rate, carloads, St. Louis to Montana common points is $1.60; a withdrawal of that rate and the substitution therefor of 1st class, means an advance to $2.85 per cwt., or 70 per cent increase.

Talcum Powder—Page 252, Item 18—In L. C. L. lots the rating has been advanced from 3rd class to 1st class; an advance from Chicago to Montana common points from $1.98 to $2.85 per cwt., or approximately 50 per cent.

Talcum powder was formerly specifically provided for,—see page 171, Item 63—Classification No. 50. This article is worth about 1½c per pound on the Eastern markets. The present rate is, therefore, 32

per cent higher from Chicago than the value of the commodity.

Powdered soapstone (see Page 217, Item 17) is the same commodity as Talcum Powder and yet on account of the difference in name alone, it is ratable at 4th class. The rating on Talc (see Item 19, page 217) is also 4th class. It also is the same article as Talcum Powder, latter being simply powdered talc.

Seeds—Page 267, Item 24, Coriander seed; Page 267, Item 26, Fenugreek seed; Less Carloads—Rating on coriander advanced from 2nd to 1st class. Fenugreek in boxes advanced 4th to 1st class; in bulk in bags or barrels advanced 4th to 3rd class. The value of coriander seed on the eastern market is the same as Canary Seed, viz., 3½c per pound. Rating on the latter is third class. The value of Fenugreek seed is about 2½c per pound on the eastern market. Considering value alone in comparison with other seeds, the advances are not justified.

Flower seeds, ranging in value **from 25c to $1.00 per pound, are subject to 3rd class rates.**

Sulphur Candles—Page 281, Item 11—Rating advanced from 4th to 2nd class. These candles are shipped to Montana from Hoboken, N. Y. the present rate through St. Paul being $2.11 per cwt. The advance means a rate of $2.66 per cwt., a raise of 25 per cent. The commodity is not as bulky as sulphur in powder form, which is subject to 4th class rates. The cost in New York is about 6c per pound, so that the present rate of $2.11 adds 30 per cent to the cost delivered.

Melons—Page 148—In Classification No. 50, melons were carried under the heading of vegetables and could be shipped in mixed carloads with vegetables. The mixing privilege has been a convenience to Montana receivers and shippers. Commodity tariffs into Montana generally provide rates on mixed cars. It is felt, however, that the proposed change in the classification is but another forerunner of a similar change in commodity rates. If this were not true, then there appears to be no particular reason for changing the classification.

Vegetables—Page 293, Item 8—Rutabagas, on account of not being otherwise provided for, are subject to 5th class rates under this item. Classification No. 50, page 179, Item 11, provides for class "C" rates.

Page 292, Item 29—Turnips with tops, and summer squash, provided for in Classification No. 50, Items 5 and 11 at class "C". New Classification makes fifth class.

Page 293, Item 7—Tomatoes, provided for at class "C" in classification, No. 50, Page 179, Item 8, new classification make them 5th class.

Commodity tariffs very often carry the clause, "Vegetables taking class 'C' rates in Western classification" or other similar clauses. It is claimed by carriers that such clauses will be eliminated from commodity tariffs and commodities will be specified which have been heretofore subject to class "C" rates. If this is true, then there appears to be no valid reason for changing the classification rating.

Tomatoes reach Montana from Florida and other eastern and southern districts. The rates are made up of combinations through St. Louis, Kansas City, Omaha, St. Paul, etc., the class "C" rates governing west of such gateways. To advance the rating to 5th class would make the following advances to Montana common points:

From—	Present class "C"	Proposed rates of 5th class	Percentage advance
Omaha	80	113	40
St. Louis	97	133	37
Chicago	97	133	37
St. Paul	80	113	40

If the carriers into Montana should amend their tariffs so as to provide practically for class "C" rates on Tomatoes, there would in all probability be movements of Tomatoes at various times upon which class rates would be the only basis in effect, and this would manifestly be a discrimination as against small producers.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Helena, Montana, April 22nd, 1912.

At a general session of the Interstate Commerce Commission held at its office in Washington, D. C., on the 17th day of May, 1912, it was ordered that the operation of Western Classification No. 51 be further deferred until the 14th day of December, 1912.

COAL RATES, MONTANA, WYOMING AND SOUTHERN RAILROAD.

Refer to Pages 56 to 62 Inclusive, Annual Report Year Ending November 30th, 1911, in Regard to Freight Rate on Coal From the Bearcreek Field of Mines, to Bridger, Montana, via the Montana, Wyoming & Southern Railroad...The Court Has Decided This Case in Favor of the Plaintiff, and the Full Text of the Opinion Rendered by Judge Hunt Is Given Herewith, and Should Be Considered in Connection With the Facts and Figures as Related in the Commission's Brief of the Case in Our Last Annual Report, Pages as Referred to Above.

IN THE CIRCUIT COURT OF THE UNITED STATES FOR THE NINTH CIRCUIT DISTRICT OF MONTANA.

MONTANA, WYOMING & SOUTHERN RAILROAD COMPANY,

Complainant,

vs.

E. A. MORLEY, et al.,

Defendants.

In Equity, No. 1009.

HUNT,

Judge.

This is a suit in equity brought on October 24, 1910, by the Montana, Wyoming & Southern Railroad Company against the Board of Railroad Commissioners and the Attorney General of the State of Montana. The object is to enjoin the enforcement of a coal rate fixed by the Board of Railroad Commissioners of the State at thirty-five cents per ton for coal to be

transported beyond the lines of the complainant's railroad. A temporary restraining order was granted, issues were framed, and by order of the Hon. Carl Rasch, then judge presiding in the Circuit Court of the United States in and for the District of Montana, reference was made to the master to take the testimony, and find the facts. The theory of the bill is that the rate is so low as to be unreasonable and confiscatory and violative of the Fourteenth Amendment to the Constitution of the United States.

The Montana, Wyoming & Southern Railroad owns and operates a steam railroad beginning at Bridger, Carbon County, Montana, and extending in a southerly direction, following Clark's Fork of the Yellowstone to Belfry, thence in a westerly direction, terminating in the coal fields at Bear Creek, Carbon County, Montana. The main line is a fraction over twenty-five miles in length, but the spurs and sidings aggregate five miles more. The road was constructed by the Yellowstone Park Railroad Company and operated from about May, 1905. The capital stock of the Yellowstone Park Railroad Company was three million dollars par value, of which $2,478,000 of stock was issued and outstanding, the bonded indebtedness of said company having been $912,000, first mortgage, five per cent thirty year gold bonds. The Yellowstone Park Railroad Company never paid interest on its bonds, and was in default. The Montana, Wyoming & Southern Railroad Company is incorporated with a capital stock of $5,500,000 par value, of which $1,000,000 par value is issued and outstanding. On September 1, 1909, this company made a first mortgage of all of its property to the Empire Trust Company of New York, to secure an issue of bonds aggregating $5,000,000, bearing interest at five per cent per annum, of which $900,000, of bonds were issued and are now outstanding. On November 1, 1909, the company also made a car trust agreement, and delivered $50,000 of its bonds, receiving therefor fifty-seven box cars of the capacity of 80,000 pounds each. The first mortgage bonds of the par value of $900,000, the equipment bonds of the par value of $50,000, and 9,990 shares of the capital stock of the complainant company amounting to $999,000, all were delivered to a bond and stock holders committee of the Yellowstone Park Railroad Company, in consideration

for the sale and transfer to this complainant of the entire property of the Yellowstone Park Railroad Company, as of September 1, 1909, and also for the sale and transfer of the fifty-seven box cars referred to.

On July 25, 1907, the Railroad Commission of the State made an order effective August 15, 1907, establishing a rate of fifty cents per ton of 2,000 pounds as the proportional rate on through shipments of coal in car-loads from points on the then line of the Yellowstone Park Railroad, and now of complainant, to points beyond its line, and thereafter, prior to January 1, 1909, the Board reduced the rate from fifty cents per ton to forty-five cents per ton, as the proportional rate. In April, 1909, hearings were had before the Board, on complaints against the prevailing freight rates, and an order was made on July 9, 1909, providing that on and after August 1, 1909, the local rate from points on the Yellowstone Park Railroad to Belfry and Bridger, Montana, should be fifty cents per ton, and requiring the Yellowstone Park Railroad Company to accept as a proportional rate thirty-five cents per ton on coal in car-loads destined to points beyond their own lines. After complainant acquired the property as of September 1, 1909, it asked the Board for a re-hearing which was granted, but on February 10, 1910, the Board denied complainant's application for an increase of rate. It appears that the Montana, Wyoming & Southern Railroad relies upon transportation of coal for its principal tonnage, that commodity furnishing eighty-nine per cent of the total revenue tonnage of the Company. This tonnage originates on the complainant's road in the Bear Creek coal fields and is hauled to Bridger. The operation consists of hauling empty cars from Bridger to Bear Creek, up grades from Belfry to Bear Creek, placing empty cars at some five coal mines, assembling cars when loaded, and hauling the loaded trains to Briger. Owing to the grades between Belfry and Bear Creek, the haul is limited to eighteen empties up the grade, and forty loaded cars down grade, and the conditions at the mines are such that an engine traveling in assembling cars considerably increases the mileage in addition to the haul from Bear Creek Junction to Bridger. The road owned three locomotives, one passenger coach, five flat cars, five bunk cars, twenty-five gondolas, one derrick car, one motor car, two

cabooses, and fifty-seven box cars. The master made full findings, summarizing the results of the operation of the complainant road, wherein he showed that the "corporate income as appearing on the books" from September 1, 1909, to September 1, 1910, was $32,474.05, during which period the interest on the bonded indebtedness on the first mortgage bonds and equipment bonds accrued to the amount of $47,083.34. A detail of the finding is as follows:

Revenue from transportation		$107,260.68
Miscellaneous revenue from transportation		192.00
		$107,452.68
Revenue from other than transportation		2,932.38
Total operating revenue		$110,385.06
Operating expenses		68,659.18
Net operating revenue		$41,725.88
Taxes accrued		3,310.52
Operating income		$38,415.36
Miscellaneous income		87.89
Hire of equipment, Dr.		6,029.20
Corporate income		$32,474.05

He found that the percentage of total operating expenses to total operating revenues in that year was 62.19 per cent; that the business of the corporation was skillfully and economically managed; that during the year complainant provided for depreciation on its equipment, ties, rails and bridges, by properly maintaining a charge to operating expenses depreciation accounts to the amount of $10,394.15; that the annual depreciation on the complainant's property, in addition to said sum of $10,394.15, and for which provision should be made out of operating expenses, is $12,694.55, and that if the additional sum of $12,694.55 had been properly charged in the said year (1909-1910) to earnings, the corporate income for the year would have been the sum of $19,779.50. It was also found that the average cost of service per ton of commodities of all classes transported, after proper allowance has been made for depreciation, is 32.1 cents per ton. He also found that a reasonable and just return on the value of the complainant's property was not less than the sum of ten per cent per annum; that the value of the complainant's real estate, based upon the average value per acre of the surrounding country used for agricultural purposes was $44,362; and that the cost of re-acquiring such real estate and right of way at the time set forth in the complaint would have been twice the value of the property which

it had acquired for right of way, and one and one half times the value of property sought to be acquired for terminals by reason of consequential damages necessarily paid to land owners, cost of condemnation proceedings, commissioner fees, etc., and that the real estate should therefore be valued at $78,207. He found that the cost of reproduction of grading for roadbed and spurs was $110,028.50; that the cost of reproduction of bridges and trestles was $11,256; of culverts and waterways, $4,500; of cattle guards, road crossings, signs and rip rap, $3,290; of fences, $4,125; of telephone lines, $3,525; of switches, $11,025; of reproduction of track per mile and the mileage, $214,222.96; that the value of buildings was $21,875; and of water stations, $3,000. It was found that the cost of reproduction of real estate, grading trestles, culverts, waterways, cattle guards, road crossings, signs, rip rap, fencing, telephone, switches, track, and buildings, was as follows:

Real ectate	$ 78,207.00
Grading	110,028.50
Trestles	11,256.00
Culverts	4,500.00
Cattle guards	3,290.00
Fencing	4,125.00
Telephone	3,525.00
Switches	11,025.00
Track	214,222.96
Buildings	21,875.00
Water stations	3,000.00
TOTAL	$465,054.45

The master also found that complainant should be allowed as a proper, necessary and usual cost of reproduction, ten per cent on $465,05.46, for contingencies, that it should also be allowed ten per cent on $511,559 for engineering, superintendence, organization, fees and legal expenses; that it should be allowed loss of interest during construction at the rate of five per cent on the sum of $562,715.89; that it should be allowed also a reasonable discount on securities issued as security for money borrowed which was placed at fifteen per cent on the amount of $62,715.89. The value of the equipment of the complainant was found to be $101,000, and the supplies on hand, $5,200. The master deducted $50,289.78 from the cost of reproduction anew in order to arrive at the value of complainant's property in its condition as it existed in September, 1909, to February, 1910 After these figures had been made, it was found that the value of physical property of the complainant, used in its business, was $731,661.28. In addition to tangible

property values, value was allowed by reason of the organization of the complainant, its location, and because of the fact that it is transacting business. This added value was put at $135,000, which brought the total value of the property at the time of the commencement of the suit to $866,661.28. The master found that after proper deduction for depreciation from the income of complainant, $32,474.05, the corporate income from September 1, 1909, to September 1, 1910, was $19,779.50, or 2.24½ per cent return on the valuation of $866,661.28.

In reducing the rate upon coal transported by the Montana, Wyoming & Southern Railroad, it was the opinion of the Railroad Commission of the State, as expressed in its report dated February 10, 1910, that the carrier named was not equipped to handle the available business which the coal companies of the Bear Creek field were prepared to give it. This, the Commission said, was "owing to the very poor condition of its power, * * * and the further fact that the company neither owns nor controls any cars whatever suitable for interchange with other lines of railroad, but is dependent entirely upon the disposition or ability of the Northern Pacific Railway Company to supply the equipment for their use, resulting in an exceedingly uncertain car supply, which places the mines much at a disadvantage not knowing what to expect, and therefore unprepared to work to their maximum capacity, even on days when there are enough cars, as it is impossible to maintain a full complement of miners who under these conditions could only at best work intermittently." A remedy was then suggested in this language:

"The whole question, as found by the Commission, can be remedied by the proper equipment of the road, to the extent that it can assure the mine owners sufficient and continuous service, thus enabling the latter to extend their operations to the maximum capacity, and furnishing the said Montana, Wyoming and Southern with a much greater tonnage for transportation over its line of railroad. If this were done, there is no question but that the present rate of thirty-five cents per ton would be amply remunerative to pay all fixed charges, interest, etc. In fact, the following comparison of rates on the Northern Pacific should serve to dispose of any doubt on that point. The M. W. & S. gets not less than

thirty-five cents per ton on every ton of coal handled. The rate per ton per mile, figuring 1.591 cents, while the Northern Pacific, taking into consideration the long, short and intermediate hauls to all stations within the State, averages on Bear Creek coal .689 cents per ton per mile. It will be readily seen that even with the reduced rate of thirty-five cents the M. W. & S. receives 131 per cent higher rate than the Northern Pacific on a ton mile basis."

Thus in due course of trying the issues, it became material to inquire into the adequacy of equipment to give service to the coal shippers, and to the service conditions between September 1, 1909, and September 1, 1910. Considerable evidence was adduced upon the point before the master and his finding is that complainant during the time mentioned gave reasonably prompt and efficient service to shippers, except during December, 1909, when extraordinary conditions prevailed, over which this complainant had no control. Examination of the testimony shows that the difficulty in December, 1909, and to an extent also in January and February, 1910, was car shortage. It appears that it is between September and February that the coal mines are most busy, and as a consequence, it is during these months that the demand for cars is greatest. It was also clearly shown that the Northern Pacific Railroad, upon which it is conceded the complainant depended largely for car supply, failed to furnish enough cars to the complainant at Bridger during the months named, and that at times said company delayed moving loaded cars delivered to it at Bridger. But it appears that such conditions were due to heavy snow falls, cold weather, and during part of December to a strike on the line of the Northern Pacific, which interfered with traffic movement of coal shipped over complainant's road. It also appears that the winter of 1909-1910 was very severe. It is not disputed that on December 1st, 1909, the complainant company nad sixty-three cars of coal, which had been delivered to the Northern Pacific at Bridger; nor that there were eighty-three cars loaded with coal in the Bridger yards on December 2, and that the Northern Pacific delayed moving such loaded cars until about the sixth or seventh of the month, when fifty-five of the eighty-three cars were taken out. It is also in evidence that on December 22, 1909, the Northern Pacific notified the

complainant company that no cars destined to Butte or beyond would be received. This seems to have been due to strike conditions. In December, 1909, complainant ordered 1080 coal cars from the Northern Pacific, but was only able to secure 642. The then manager of the complainant made every effort to secure additional cars, but did not get them. In January, 1910, complainant was also unable to obtain a full supply of cars, but owing to storms, the cars were not supplied. It is shown that the cars which the Northern Pacific delivered to complainant at Bridger were, as a rule, promptly taken up to the mines by the complainant company. Now, inasmuch as the complainant necessarily depended on the Northern Pacific Railroad for an adequate number of cars and for the movement of any and all cars beyond Bridger, and inasmuch as it was delay in movement of freight and cars that caused the main difficulties, possession of a larger number of cars than were furnished, no matter who owned them, would not have bettered the condition; hence the question of ownership of car equipment during December, 1909, and January, 1910, loses real importance in the case.

In Logal Coal Company v. Pennsylvania Railroad Company, 154 Fed. 497, the following language of Judge Holland is pertinent to the situation involved:

"It is true the defendant company is required to furnish sufficient facilities at all times to transport the merchandise of shippers along its route, but it occurs in the bituminous coal mining industry in certain of the winter months of the year that the extraordinary demand for bituminous coal is far beyond the car capacity of the railroad company to transport, and it is conceded that the railroad company is not required to keep a car equipment sufficiently extensive to meet the maximum output at any part of the year, but that it is only required to furnish car facilities to bituminous coal shippers to meet a demand adjusted and regulated to utilize the company's car equipment with uniformity and regularity throughout the year."

The concession referred to in that case was made with correct understanding of the law which applies in the present case. After February, 1910, when the output at the mines decreased, there was adequate car service. It is of moment to recall that

the mines had limited storage capacities, and on this account were dependent upon immediate supply of cars to ship the coal mined. And while there was in fact lack of cars to meet the unusual demand to transport the output in December and January, still the conditions were because of lack of movement and so largely due to the weather, to strikes in part, and to the Northern Pacific delays because of weather and strikes, that complainant ought not to be made to suffer.

Again, the prediction of the commission to the effect that better equipment and service would be followed by extension of operations and increased tonnage even at the reduced rate, has not been fulfilled, for the actual experience of months of operation after the rate was reduced, during ten months of which time there was full opportunity to move all coal mined because of ample facilities and service, has demonstrated that the coal shipments materially decreased, it appearing that between September 1, 1908, and September 1, 1909, 264,680 tons were transported, while between September 1, 1909, and September 1, 1910, there were only 251,163 tons carried.

Naturally, the Commission was called upon to act upon what then appeared to it to justify a reduction for the future. Its action was legislative in character, and as the rate was for transportation wholly within the State, primarily the State authorities had to determine the matter. The state board could not accurately determine in advance what the effect of the reduction of the rate would be, but could only use its best judgment on the evidence before it, and consider whether the new rate would result in such an increase of volume of business as would make it profitable or not. But the rate having become effective for a long time, and being attacked in judicial proceedings, the court is in a better position because it has the aid of a statement of the business actually done since the rate was made effective. The rule is well established that where a rate has been made for the future, and a reasonable time has passed in which application of the rate to the business transacted can be made to ascertain whether upon the basis of the rate it will be remunerative, then a new situation is presented, and a judicial question is involved which the courts will determine by settling the rights of the parties as they appear upon the existing facts. Chicago and Northwest-

ern Railroad v. Day, 35 Fed. 866. To conclude on this branch: As the case is presented by the evidence before the master, I am constrained to hold that the complainant carrier has shown that it was not guilty of breach of duty in respect to furnishing or moving cars, and should not be held responsible for the failure on the part of another carrier, the Northern Pacific, to have furnished or moved cars promptly at the times hereinbefore referred to; and in the light of experience of the twelve months after the order of the Commission was in effect, it is clear that the opinion of the Commission that shipments of coal would increase under the reduced rate was not correct, hence was erroneously used as a basis of action for the future rate.

But notwithstanding these things, judicial power will not interfere with the enforcement of the rate unless complainant has clearly proven that it is so unreasonably low as to conflict with the constitutional rights of the carrier, as guaranteed by the Fifth Amendment to the Constitution of the United States; that is to say, unless it is confiscaory. Texas & Pac. Ry. Co. v. R. R. Commission of Louisiana, 192 Fed. 280.

In Smythe v. Ames, 169 U. S. 466, the Supreme Court held that a regulation made under the authority of a state enactment establishing rates for the transportation of property by railroad that will not admit of the carrier's earning such compensation as under the circumstances is just to it and to the public, deprives such carrier of its property without due process of law, and denies to it the equal protection of the laws, and therefore becomes repugnant to the Fourteenth Amendment of the Constitution of the United States. The doctrine was also there announced that while rates for the transportation of property within the limits of a state are primarily for determination by the authorities of the State, the question whether rates fixed by the authority of the State are so unreasonably low as to deprive the carrier of its property without just compensation, is one not to be conclusively determined by the law-making power of the State, or by regulations adopted under the authority of the state, but may become the subject of judicial inquiry in a court of competent jurisdiction.

It comes therefore to this: Whether the property of the complaining carrier has been taken and will be taken without

right by the continuance of the order of the Commission depends upon the valuation of the property, the income derived from the new rates and the proportion between the two. Prentis v. Atlantic Coast Line, 211 U. S. 210, 228. So it becomes necessary to get at the fair value of the complainant's railroad.

In Wilcox v. Consolidated Gas Company, 212 U. S. 52, the Supreme Court held that the value of the property there involved (which was real estate) was to be determined as of the time when the inquiry was made regarding the rates, and that if the property which physically entered into the consideration of the question of rates had increased in value since it was acquired, the company was entitled to the benefit of such increase.

Inasmuch as there are no circumstances which except the present case from the rule just cited, the court will regard the situation as it existed in February, 1910, when the Railroad Commission made its order. The Complainant asked the master to accept the estimate testified to by Mr. Morris A. Zook. Mr. Zook is evidently a man of education and of an unusually large experience as a civil engineer in railroad construction; and he has also devoted attention to the economics of railroads. He has been called upon to participate in the physical valuation of some of the most important railroad systems in the country—notably the New York, New Haven and Hartford. Mr. Zook proceeded upon the assumption that in order to ascertain the value of the property of the complainant company, estimated cost of reproduction became a fundamental element. This assumption conforms with what can now be said to be the general view of the Supreme Court of the United States, as well as of distinguished economists who have written upon and testified to the subject. Nebraska Rate Case, 169 U. S. 546. But it is in applying the rule that difficulties occur.

Mr. Zook made the total cost of reproduction $891,614.31. Allowing for a depreciation of three years, he deducted $59,556.03, which left his estimate of the value of the physical property of the road upon reproduction basis at $832,066.32. He was thereupon asked these questions:

"Q. Now, Mr. Zook, in your opinion, is the cost of repro-

duction of a railroad which maintains an organization and is a going concern, a proper measure of the value of that railroad?

"A. No sir.

"Q. What additional elements, in your opinion, should be taken into consideration in valuing a railroad?

"A. Well, value is determined by use, and without use we have not any value. The element which enters into its value is the value as a going concern.

"Q. What elements go to make up its value as a going concern?

"A. As a going concern, the value of its organization, the value of its strategic position, the value of the development of the business and property along its line, the value of its earning capacity on a fair basis.

"Q. What do you mean by a fair basis as an earning capacity, upon what rates?

"A. What would be a fair return for services rendered is the earning capacity.

"Q. Would the rates allowed for similar services in other localities have any figure, in your mind, as to establishing a fair rate, from the standpoint of cost of services only?

"A. I think that the rates should be as good as those allowed for similar services in other localities.

"Q. Now, in your opinion, how much is the value of the Montana, Wyoming & Southern Railroad Company enhanced by its being a going concern, taking into consideration the elements you have mentioned, over and above what it would cost to reproduce its physical property,

"A. That is a matter of judgment, and I have assumed it to be equal to $150,000.

"Q. How do you arrive at that figure?

"A. That is taking a three year period at $50,000 per year, $50,000 to be about the earning capacity for that three year period.

"Q. That is per annum,

"A. Yes sir.

"Q. And adding the value of $150,000 to the figure you have already mentioned, what amount does that give you,

"A. That makes a total of $982,058.18."

On cross-examination, witness said that he took the three years as a basis because that was the usual period allowed in order to ascertain the present worth of the value of a going concern, and that he reached the conclusion that the company should do a business of $50,000 a year by examination of their reports of earnings for two years prior to 1910, which disclosed that they were earning between forty and fifty thousand dollars per year. Witness was asked if, under the rates being charged for coal, thirty-five cents per ton, on the amount of tonnage furnished to the road, it was unable to pay interest charges, fixed charges, and operating expenses, how he could put the value that he did upon the road as a going concern. Witness said he did not take into account the fixed charges; that if 251,000 tons were used as a basis at forty-five cents per ton, gross earnings would be $112,950. Allowing then sixty per cent, or $67,770, for operating expenses, there would be left $45,180 for earnings.

Division of Mr. Zook's statements gives us these elements in estimating value: (1) Reproducing the road as a physical thing; (2) use as a going concern; (3) strategic position; and (4) earning capacity.

It is convenient to examine these elements seriatim.

Real Estate: The master's finding of $78,207 as the value of the real estate for railroad purposes appears to be sustained by evidence and to have been arrived at by consideration of the fair value of the land taken and the damages to the residue in consequence of a part of the tract having been taken for railroad purposes. The rule adopted was that for the use of the railroad twice the value of acreage property should be paid and one and one-half times the value of the property for station and grounds in the vicinity of towns.

Grading: The estimate of the value of grading as found by master was $110,028.50. There was a serious conflict in the estimates of the value of the grading due principally to discrepancies in the estimated quantities of cubic yards of earth which had been removed, and to the price per cubic yard which should be allowed for cost of removal. Mr. Zook allowed for 340,500 cubic yards at thirty cents a cubic yard, while Mr. Crookes, an engineer of experience and ability, called in behalf of respondent, estimated 242,122 cubic yards at fifteen cents a cubic yard. Mr. Zook's estimate of loose and solid rock was

also larger than that of Mr. Crookes'. The difference between these engineers arose because of the difference in methods of measurement, but Mr. Zook, when he made his estimates, had a profile map with him showing the original contour of the ground, which Mr. Crookes did not have. They varied also in estimates of grading, shrinkage and fills. Mr. Zook included in his estimates grading upon certain spurs and in certain yards, and grading to several of the various mines to which spurs run, while Mr. Crookes appears to have made no estimate upon these latter matters. Mr. Zook spent ten days in making his estimates and described with care the manner of observation and physical measurement which he had employed in estimating the value of this and other railroads. The master's finding as to the quantity and character is well sustained by the evidence; and the price allowed by the master for the yardage is also sustained, and just.

Trestles: The estimate of $11,256 for trestles, based upon 938 lineal feet at $12.00 a foot, was correctly found.

Culverts and Waterways: The finding of the master of $4,500 as the value of culverts and waterways appears to be just, as does the estimated value of $500 for cattle guards, $170 for road crossings, $120 for signs, and $2,500 for riprap. These several findings have been worked out of the conflicting evidence of the engineers, and are all well sustained by substantial evidence.

Fencing: The item of fencing was placed by the master at $4,125. This appears to be fair.

Telephone: The master allowed $3,525 as the value of the telephone line belonging to the complainant corporation. Here again the master seems to have adopted a conservative valuation, based upon 23½ miles at $150 per mile. Mr. Zook's estimate upon this item was $200 a mile, while Mr. Crookes' was $125 per mile.

Switches: For switches the master allowed for 49 complete switches, at $225 each, the sum of $11,025. There was a discrepancy between the estimates of the engineers with respect to this item, due in part to the labor charge calculation and to guard rail costs. The master's finding will not be disturbed.

Track: The finding of the estimated cost of reproduction of track per mile was based on twenty miles with sixty-pound

rails; five miles of sidings with sixty-pound rails; and 5.1 miles of track with seventy-two pound rails. The master allowed for twenty miles of track with sixty-pound rails at $6,982.90, $139,658; for five miles of sixty-pound rails at $6,982.90, $34,914.50; and for 5.1 miles with seventy-two pound rails at $7,774.60, $39,650.46. This mileage appears to have been correctly calculated, and the allowances made by the master conform more closely to the estimates of Mr. Crookes than to those of Mr. Zook. They appear to have been based upon the evidence of actual cost of reproduction of track.

Estimates include all spikes, cross-ties (2,822 ties to the mile, at 62c), tie plates, track laying and surfacing, and ballasting ($500 per mile). The engineers did not agree upon the item of ballasting. The complainant's road was referred to as mud ballasted, and appears not to have been thoroughly ballasted, as railroad authorities would regard it. An estimate of $1,200 per mile to ballast the road properly was made by some of the witnesses, the weight of the testimony going to show that it would be necessary to obtain earth for proper ballasting from places other than the sides of the embankments of the road. Mr. Zook estimated $500 per mile as the cost of proper earth ballasting, but thought that the labor cost of getting earth at that rate would be no less than for gravel. The findings of the master are fully supported.

Buildings: The value of the buildings, placed at $21,875 by the master, is sustained; so too is the item of $3,000 as the estimated cost of reproduction of water stations.

We have therefore as a fair estimate of the cost of reproduction the sum of $465,054.46.

Contingencies: To this sum, according to the testimony of the engineers for both parties, there should be added ten per cent for contingencies, or $46,505.44. By contingencies are meant such things as could not reasonably have been foreseen at the time of making original estimates by engineers.

Engineering, Superintendence, Etc.: There should also be included in the cost of reproduction an item for engineering, legal expense and superintendence. As there is no substantial conflict in the testimony as to the propriety of this allowance, it can be included at ten per cent. Witness divided it as follows: Engineering, five per cent; legal expenses, three per cent; superintendence, two per cent. This allowance may therefore stand at ten per cent upon $511,559.90, or $51,155.99.

Interest: The master allowed as a necessary and usual cost of reproduction, five per cent upon the sum of $562,715.89, or $28,135.79, as loss of interest during construction. This would include five per cent upon the use of money for the practical total cost of reproduction, and allow a year for construction itself, or allow an average of five per cent for the money used if construction extended over a longer period. Complainant's evidence upon the point is to the effect that such a road could not be built with the same facility that one less isolated could be; that lack of organization, lack of transportation facilities, lack of ready material, would make reproduction slower and more expensive. Inasmuch as the justice of allowance of interest during construction is admitted, the basis of the master's finding is reasonable, and his estimate must stand.

Pioneer Telephone and Telegraph Co. v. Westernhaver et al., Okla.,

Discount on Securities: The master allowed fifteen per cent on $562,715.89, or $84,407.38, as a necessary and usual item of cost of reproduction. There was no evidence offered on behalf of the Railroad Commission tending to dispute the conditions which the witnesses for the complainant said existed generally throughout investing communities, namely, that a railroad, such as the one under investigation, is only able to make its financial arrangements by regarding as a part of the construction cost to which it is subjected a discount representing the difference between the amount derived from the sale of its bonds and the amount which the bonds must eventually cost the company. Recognition of discounts on securities, based upon the considerations just expressed, has been made by the courts. Of course there never could be any allowance whereby a corporation can be allowed to capitalize its own lack of credit, but where the bonds are sold at a reasonable discount, and bear a low rate of interest, it would seem to be the equivalent of selling the bonds at par with a high rate of interest. Here the fifteen per cent seems to be reasonable, the testimony showing that upon such discount the bonds are put upon an equality in marketable conditions with the bonds of some of the very largest and most successful railroads in the country.

Equipment: There should also be included in the estimate an allowance for equipment, which, under the evidence, may

be taken as found by the master, $101,000; also for supplies on hand, $5,200.

Depreciation: Following the doctrine of the City of Knoxville v. Knoxville Water Works, 212 U. S. 1, the master made reasonable depreciation allowances. The reason for such findings is that it is fair to deduct from the estimated cost of reproduction anew an amount which will represent the wear and tear on the property since it was put into operation. Depreciation accounts find their foundation in efforts to equalize profits during different years, so as to avoid requiring the total cost of improvements to appear as an expense of the year when such improvement proves unserviceable. The systems of estimating depreciation may differ, but the principle of the allowance for depreciation rests upon the foundation already stated. It goes without more than mention that ordinary wear and tear and decay are the principal causes for depreciation, although other factors which enter into the matter are that what is in use becomes out of date because of improvement in scientific knowledge or improved methods. Accountants and students, as well as practical men, recognize the necessity for a railroad company to provide for a depreciation fund or account. The Interstate Commerce Commission, in the performance of its great services to the public and to railroad carriers as well, provides that depreciation accounts of equipment shall be kept by railroad carriers, and that there shall be included within such accounts "a monthly charge of one-twelfth of ——— per cent per annum of the original cost (estimated if not known record value or purchase price)," of equipment, to provide a fund for replacement when retired.

The master allowed what appeared on the carrier's books, namely, $10,394.15, made up of these items: Equipment, $2,555.63; rails, $1,487.76; ties, $5,279.04; and bridges and trestles, $1,071.72. This was depreciation on the books between September 1, 1909, and September 1, 1910. But he allowed the additional sum of $12,694.55 depreciation, which he found ought to have been properly charged between September 1, 1909, and September 1, 1910, to earnings, and for which provision should have been made out of operating expenses by complainant, in order that its property might not become depreciated in efficienty or value. The aditional allowance was based upon testimony that the entries in the books as just heretofore

stated did not truly represent the depreciation account. One expert witness said he would allow, as proper depreciation of equipment, $4,955, and proper depreciation and reserve for ties, rails, bridges and buildings, $18,153.70. In this way he arrived at the difference between what was charged and what he said ought to have been charged, or $12,714.55. There is a slight discrepancy in these figures and those found by the master ($12,694.55), due probably to clerical error. Equipment depreciation was based upon twenty years' life for a locomotive and five per cent depreciation for each year, or $1,450 per year, with a salvage of $180 per year, or net depreciation $1.270 per year. The depreciation allowance upon rails was based upon percentages on the estimated weights of rails per ton and the estimated life of a rail, put at sixteen years. Allowing for tie depreciation, it was estimated that at the end of seven years the depreciation would equal the original cost of instalment, the value of each tie being put at fifty cents when placed on the track, allowing a seven year life for each tie from the time of the estimate.

Part of the additional allowance was estimated depreciation upon buildings, upon a twenty-five year life with no salvage, and upon culverts and trestles, on the basis of an eight year life, or 12½ per cent.

While the additional depreciation allowance of $12,694.55 per annum accords with the evidence of complainant, and seems to justify the master's finding, yet there are so many differences in the statements of the witnesses as to the estimates, all of which depend upon opinions of what should or should not be, it appears to be just to hold to the $10.394.15 for 1909-1910 shown on the books. Gathering from the evidence that different portions of the track were added at different times after 1906, and that different sidings had been built, and that some of the ties had been in the track for one, two and three years only, estimate of wear and tear may be fairly made as of three years prior to March, 1910. The deduction for depreciation, therefore, would be three times $10,394.15, or $31,182.45.

Value as a Going Concern: Briefly stated, the argument of complainant is that mere cost of reproduction is not by itself a proper measure of the value of a railroad; that there are such things as strategic position, organization, value of possible and probable development of business and property along its line, and earning capacity, to be considered and estimated by

standards of pecuniary value. The master took this view, which has heretofore been expressed in the quoted testimony of Mr. Zook, and allowed $135,000 to cover the item.

I shall not dispute the proposition that a prosperous company never paid interest upon its bonds; nor has it accumulated more than a very limited equipment; nor has it prospered to any apparent material extent. Although without a competitor it never seems to have had to its credit a well-established business; nor did it keep up its roadbed as it should have. Its history shows that it languished and drifted into the hands of receivers. True, under complainant's ownership, it has added to its equipment and would seem to be well and economically managed, yet it is significant that its coal shipments were less from September, 1909, to September, 1910, than in the previous twelve months. Nevertheless, its principal patrons have expressed dissatisfaction with the service, and there seems to be nothing either by way of mere good will or advantage incident to the possession of a monopoly, which, although of some value, justifies present attempt to ascertain such valuation, independent of the whole structure.

Certainly the property of the Montana, Wyoming & Southern has a value independent of use or right of use. The rails, ties, switches, stations, fences, and all such things, are valuable, and unless they can be used by the complainant company in the place where they are now, their value is away below the estimates allowed by the master. It is evident, however, that in the estimates allowed the fact that the whole railroad is one in operation and use has been considered, and that values upon the several things have been based upon value of the railroad as in use. I am unable to see why, under the facts, at this time, there should be separation of going concern value from railroad value. Water District v. Water Company, 99 Maine, 371; Spring Valley Water Works v. City of San Francisco, 192 Fed. 137. It is proper, therefore, that the master's finding (No. 50) should be disregarded, and it will be.

Summarizing now, and we have as the value of the physical property of the complainant used in its business for the public convenience, these sums:

Real Estate	$ 78,207.00
Grading	110,028.50
Trestles	11,256.00
Culverts and waterways	4,500.00
Cattle guards	500.00
Road crossings	170.00
Signs	120.00
Rip Rap	2,500.00
Fencing	4,125.00
Telephone	3,525.00
Switches	11,025.00
Track	139,658.00 34,914.50 39,650.46
Buildings	21,875.00
Water Stations	3,000.00
Contingencies	46,505.44
Engineering, superintendence, etc..	51,155.99
Interest during construction	28,135.79
Discount on securities	84,407.00
Equipment	101,000.00
Supplies	5,200.00
TOTAL	$781,459.06
To be deducted for depreciation	31,182.45
Total cost of reproduction	$780,270.61

Now if we take the "gross coroporate income" of the property to be $32,474.05, and accept the valuation to be $750,276.61, it will appear that the corporate income affords 4.3 per cent return; and if we take the total revenue freight for the year 1909-1910 at 281,907 tons, and divide the entire operating expenses, $77,998.90 (which also include depreciation $10,394.15, taxes $3,310.52, car hire $6,029.20 and miscellaneous expenses $87.80), by the total tonnage, we find the cost per ton of freight to be 27.7 cents. It is plain from these figures that not only was the complainant unable to meet annual interest charges on its bonded debt of $950,000, but that there was a deficit of $15,025.95. Complainant company would therefore find itself unable to meet its obligations upon a continuance of the rate of thirty-five cents per ton for coal, with a haul of, say, 251,163 tons.

But we must not accept the amount of the bonded debt as a complete or accurate criterion of the value of the property. Reference to it may be had merely for the purposes of argument. President Hadley, of Yale University, in the report of the Railroad Securities Commission to the President of the United States, dated November 1, 1911, says that "In so far as the value of the property is an element in rate regulation, the outstanding securities are of so little evidentiary weight that it would probably be of distinct advantage if courts and commissions would disregard them entirely, except as a part of the financial history of the property, and would insist upon

direct evidence of the actual money invested and of the present value of the properties."

Having found that the operating expenses were no greater than were reasonably necessary, and that administration by this complainant has been had with due regard to the necessities of strict economy, and that the amount expended for supplies, wages, and salaries has been reasonable and necessary, we can go directly to estimates. We find that a continuance of the present rate upon coal, which is eighty-nine per cent of the traffic carried, would mean that complainant would receive $87,907.05 revenue for coal carried. Now eighty-five per cent of the total operation expenses, put at $77,998.90, is $69,419.02; and eighty-nine per cent of the value, $750,276.61, is $667,746.18. If coal would bear its burden of contributing, let us say to illustrate, ten per cent on $667,746.18, or $66,774.61, this, when added to $69,419.02, would amount to $136,193.63, which coal must yield. Deducting now the actual coal receipts (on a thirty-five cents per ton basis), $87,907.05, from what on our assumption coal should pay, $136,193.65, and there is a deficit of $48,286.58. To make this deficit, the rate on coal, still estimating 251,163 tons as the tonnage to be carried, would have to be increased 19.22 cents over thirty-five cents per ton, or 54.22 cents per ton.

Let us try it in another way: Accepting always that a reasonable return is one which, under honest accounting and responsible management, will attract the amount of investors' money needed for the development of railroad facilities, we have here an investment made by the owners which is evidently regarded by them as reasonably secure. They are therefore entitled to a rate upon their investment which approximates the rate of interest which prevails in other lines of industry in and about that part of Montana wherein their railroad is operated. There is some uncertainty in the future of this railroad, but on the other hand, it is proper to consider not only the coal mines but also the probable development of the agricultural country in the valley below the coal mines, and possible strategic advantage in situation. Eight per cent per annum is the legal rate of interest in the State of Montana, and within two per cent of what bankers have testified is a rate frequently demanded upon small loans in Carbon County, Montana, into which the railroad runs. Eight per cent may

therefore be used as a fair basis to illustrate return upon the investment. So, without fixing any rate, but merely for further illustration, we will hold to eight per cent. Keeping to $667,746.18 as the proportion of the value of the road upon which coal should pay interest, and increasing eighty-nine per cent of the operating expenses by one-fourth, thus making them $86,773.77, to earn the eight per cent, at thirty-five cents per ton, it would be necessary for the railroad to take in $140,193.46 on coal account, or to carry 400,552 tons, which is not far from the tonnage estimate which Commissioner Stanton, of the Railroad Commission, believed would be carried upon the reduction of the rate to thirty-five cents per ton. Or, using nine per cent as a fair return upon the value of the property, it will be necessary for the railroad to earn $146,870.92 on coal, which would require it to carry 419,531 tons at thirty-five cents per ton, which tonnage even more nearly approximates the estimate of Commissioner Stanton and of the mine owners themselves in estimating the effect of the reduction.

This brings out in a very strong way the fact that this controversy is the consequence of the mistaken belief of all concerned that increased tonnage would follow reduced rates.

It is recognized that in making the above mathematical demonstrations, the imposition of the burden upon coal to the entire traffic and operating expenses is necessarily arbitrary, yet it would seem to be more reasonable to reach results by the method adopted than to consider the entire road a coal road, and more accurate than to say that eighty-nine per cent of the traffic should pay fair returns upon the entire valuation of the property.

Comparison with rates on other railroads is appropriate.

The Commission fixed the rates on coal on the Yellowstone Railway Company, a distance of 10½ miles, at a through rate of twenty-five cents per ton, and on coal transported on the Montana Railroad from Lewistown to Harlowton, a distance of sixty-three miles, at ninety cents per ton; from Lewistown to Oka, a distance of fifty miles, at eighty cents per ton; from Lewistown to Straw, a distance of twenty-nine miles, at sixty cents per ton. The Commission also allowed the Northern Pacific proportional through rate from Bridger per ton of coal to Helena, Butte, Townsend, Toston and Prickly Pear Junction, at $1.55 per ton, which was the same rate as was in force before the order herein assailed was made. The Commission

reduced the through rate from $2.00 per ton of coal to these places to $1.90 by deducting ten cents per ton from the Montana, Wyoming & Southern rate per ton. Such reductions as it made in the Northern Pacific rates per ton of coal from Bridger were shown to be to places to which comparatively few coal shipments were made.

Enough has been said to demonstrate that under the order of the Commission complainant company falls far short of enjoying a reasonable return on capital invested, not to mention the element of some uncertainty which goes with the investment, and upon which the investors are justified in expecting a chance of added profit to compensate for risk.

It is, however, not for the courts to assume to prescribe rates. Their duty is generally ended when, after careful consideration of the facts of the particular case before them, and after weighing the interests of the public and of the owners of the railroad, determination is made whether the administrative authority has exceeded its constitutional power in making an order which in practical application deprives the owners of their property without just compensation. No given per cent can be fixed by the court, as a rate to which the carrier is entitled as a matter of right. Covington, etc., Turnpike Co. v. Sanford, 164 U. S. 578. It may use percentages to illustrate, but not as fixed measures. But there must be just remuneration. Cotting v. Stockyards Company, 183 U. S. 91. Spring Valley Water Co. v. San Francisco, 165 Fed. 657.

From these views it follows that the court must hold that the order made is an infringement of the constitutional rights of the carrier in that it deprives it of a fair return upon the reasonable value of its property while in use for the public. In so far as it is necessary to modify the findings of the master to conform with the views herin expressed, such modification will be deemed made.

Decree of injunction will issue.

Subject: Rate on Candles.

Charles T. Perry & Co.,

vs.

Northern Pacific Railway Co.,

Oregon-Washington Railroad & Navigation Company.

On behalf of the above named complainant, engaged in the manufacture and sale of soaps, candles, sal soda, etc., at Helena, Montana, formal complaint was made by this Commission to the Interstate Commerce Commission at Washington, D. C., and forwarded to that body under date of April 22nd, 1911, alleging that certain rates, as follows, were unjust, unreasonable and discriminatory in violation of the Act to regulate Commerce.

Complaint set forth that the Northern Pacific Railway had in effect for a number of years commodity rates on soap and candles in less than carload lots from Helena, Montana, to Wallace and Burke, Idaho, respectively, of 55 and 56 cents per cwt., and a rate of 56c per cwt. from Helena, Montana, to Wardner, Kellogg and Osborne, Idaho, in connection with the Oregon-Washington Railroad & Navigation Company, formerly the Oregon Railroad & Navigation Company, all of which rates were published in Northern Pacific I. C. C. No. 4294, Item No. 90.

That the defendants advanced, or purported to advance, effective April 5, 1911, the rate on candles, less than carloads, from Helena, Montana, to the points of destination, as above, by the publication of Supplement No. 11 to Northern Pacific I. C. C. No. 4294, Item No. 120, the rates provided by such supplement being as follows: From Helena to Wallace, Idaho, 72c; to Osborne, 75c; and to Burke and Wardner, 77c per cwt The same supplement also published rates on candles, carloads, minimum weight 30,000 pounds, from Helena to Wallace, 55c; to Burke, Wardner, Kellogg and Osborne, 56c per cwt.

That Item No. 120, Supplement No. 11, as above, did not indicate by the use of black-faced type, or by the use of any symbol, that the rates on candles, less than carloads, were advanced and that the carriers did not, by the publication of said Item No. 120, provide for cancellation of all or any portion of Item No. 90 of the original tariff; therefore contended that the rates named in Item No. 90 of I. C. C. No. 4294 on soap and candles, less than carloads, were still legally in effect, regard-

less of the rates provided in Item No. 120 in said supplement No. 11, which latter rates, however, had been charged and paid by this complainant on and after April 5, 1911.

Prayer was made that the defendants be commanded to cease and desist from charging or attempting to charge in the future any higher rates on less than carload shipments of this commodity than those provided in Item No. 90 of Northern Pacific Tariff, I. C. C. No. 4294, and that reparation be awarded on such shipments as have moved since April 5, 1911, and which were assessed the advanced rates.

The case was presented to Special Examiner Burchmore, of the Interstate Commerce Commission at Helena, July 17, 1911, and decided April 1, 1912. In its report, the I. C. C. says:

> "In justification of the advance the Northern Pacific Railway Company asserts that years ago, in order to foster complainant's industry, it established low commodity rates, but that recently there had been objection as to these rates from competitors of complainant; that the rates attacked are unreasonably low and if continued might force reduction of other rates."

Continuing in its opinion, the Commission says:

> "Complainant contends that its business moves in less-than-carload lots; that competition is keener and the expense of operating greater now than formerly; and therefore complainant is not able to stand an advance in the cost of transportation; that it is not shown that the former rate was unremunerative and that certain comparisons of rates for similar distances indicate that the rate assailed is high.
>
> "No evidence was offered to show that the cost of the service had increased or that the carriage of this particular article was not profitable to them. These rates had been in effect for a period of years. Complainant established a business under them, and has no means of reaching the market other than via defendants' line."

The Commission found in favor of the complainant in the following language:

> "We are of the opinion and find that defendants have not sustained the burden placed upon them by the statute to show that the new rates are just and reasonable; and that the defendants should establish for the future rates not in excess of those in effect previous to the advance in question; further, insofar as complainant made shipments and paid charges

thereon at the rates found herein to have been unreasonable, it has been damaged to the extent of the difference between the amount which it did pay and the amount which it would have paid had the rates herein found reasonable been applied, and that complainant is entitled to an award of reparation upon that basis."

Complainant was directed to file a statement of shipments showing necessary facts in connection with their movement, and upon its verification an order for reparation will be entered.

Subject: Rate on Pickles.

Martin Pickling Company,

vs.

Northern Pacific Railway Co. and Great Northern Raiway Co.

Complainant is engaged in the manufacture and sale of pickles at Huntley, Montana, and made complaint on May 2nd, 1912, alleging as unreasonble the combination of local rates on pickles, carloads, from Huntley, Montana, to Great Falls, Montana, based on Billings, viz., fifth class, minimum weight 36,000 pounds.

Before final action was taken on this complaint, same was withdrawn for the time being for the reason that severe hail storms in the Huntley district had destroyed to a very great extent the growing crop of cucumbers, cauliflower, etc., which will curtail the product of this complainant for the present season.

Subject: Overcharge on Corn Shipment.

R. R. Black,

vs.

Great Northern Ry Co.

Complainant shipped a car of corn from Sioux City, Iowa, December 15th, 1910, consigned to himself at Hinsdale, Mont. At point of origin, rate was quoted by carrier's agent, of 30c per cwt. through to destination, which would make the charges $132.00. Some time after the shipment reached Hinsdale, a supplementary freight bill for $68.56 was presented by the defendant, same being based on 46c per cwt. These additional charges were paid, and claim presented, alleging overcharge for the difference between 30c and 46c per cwt., in that the latter was unreasonable so far as it exceeded the rate of 30c which applied from Hinsdale to Sioux City, but not in the opposite direction.

The shipment being interstate, formal complaint was prepared by this Commission and presented to the Interstate Commerce Commission at Washington, setting forth the facts as hereinbefore stated, and asking for reparation on basis of the 30c rate.

The complaint was filed with the interstate Commerce Commission February 25th, and was heard at Helena, Montana, on July 17th, 1911, but was not decided until May 6th, 1912.

The distance from Sioux City to Hinsdale, Montana, is 950 miles, and the rate of 46c pays defendant 9.68 mills per ton per mile. The rate of 30c applying in the opposite direction between same points figures 6.31 mills per ton per mile. From Sioux City to Williston, N. D., and from Sioux City and St. Paul, Minn., to Mondak, N. D., the rates of the Great Northern are respectively, 24½, 25½ and 19c, the rates per ton per mile figuring 6.5, 6.4, and 5.67. From Sioux City to Portal, N. D., the distance is 722 miles, and there is a joint rate with the C. M. & St. P. Ry. and the Minneapolis, St. Paul & St. Marie of 24½, or 6.78 mills per ton per mile. These comparisons were offered by the complainant at the hearing, and were admitted to be correct. Complainant also cited the average haul of 244 miles on the Great Northern Railway for the year ending June 30th, 1910, including both carload and less than carload freight, paying the carrier 8.22 mills. The Commission's report states that the difference in expense of operation,

due to grades and condition of transportation are not a material factor as between the east-bound and west-bound hauls. It will be noted from the foregoing, that rates on corn from Sioux City to various points points in the direction of the Hinsdale shipment, yield to the carriers per ton per mile earnings, ranging from 5.67 mills to 6.63 mills, in view of which it would seem that the Commission should have decided that 30c or 6.31 mills per ton per mile, was a reasonable rate west-bound. The opinion, however, holds as follows:

> "Upon the record, we are of the opinion and so find, that the rate of 46c was unreasonable to the extent that it exceeded 38c, and the carrier will be required to maintain for the future, a rate not in excess of that amount."

Complainant was awarded reparation on basis of 38 cents.

No reason has been advanced in the opinion, as to why the rate per ton mile from the same initial point to Hinsdale, Mont., should be greater than to intermediate North Dakota points, on traffic moving over the same lines in the same direction, and the principle seems to have been reversed in this case, viz., that the per ton per mile earnings decrease as distance increases. The Montana farmer is not only handicapped by being further from the corn market, but is forced to pay a higher rate per ton per mile than the farmer living on the line of the Great Northern in North Dakota.

The Interstate Commerce Commission under date May 27th, 1912, in reply to our letter, says:

> "This Commission very carefully considered the case, and looking to all of the comparisons therein referred to, as well as the other facts and circumstances affecting the traffic in that part of the country, reached the general conclusion as stated, that it was justified in reducing the rates to the extent indicated in the report and order made, but was not satisfied to reduce them to a lower basis. It must be remembered that this conclusion was reached with reference to all of the many facts, circumstances and conditions, as well as to the particular comparisons to which you refer, and that it is not safe to adjust rates strictly with reference to the one feature of per ton per mile comparisons shown between particular points. There are many matters which must be considered."

We appreciate the fact that there are many things to consider in rate making, but it would surely seem as though the

Commission's report would cite the peculiar conditions or circumstances in a specific case such as this, which warrant its conclusions. We fail to find any such in this decision.

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Subject: Express for Prepay Station.

C. Bourgeois,

vs.

Wells, Fargo & Company Express.

This complainant is a resident of Huson, Montana, and complained that the Wells, Fargo & Company Express had accepted at Kansas City, Missouri, a package addressed to him at Huson, Mont., and instead of making delivery at Huson, it was carried by that station to Alberton, 10 miles west, where the package was held at the time the complaint was made, for, as complainant alleged, the payment of charges from Alberton back to Huson, and 25 cents for a telegram sent by the operator to the express Company's agent, requesting that it be returned.

The tariff under which this shipment moved, provided that matter for points where no agent is located, will be delivered at the office nearest, or most convenient to destination, but if desired put off at such non-agency station, the charges must be PREPAID, and shipments receipted for at OWNER'S RISK. Alberton is the nearest and most convenient agency of the express company, to Huson, and for the reason that the charges were not prepaid, and the shipment not billed at owner's risk as required by the rules, it was carried through, and the express company was within its rights in demanding payment of charges on the return of the shipment from Alberton.

The question of payment for a telegram as stated in the complaint, had nothing to do with the rates of the express company, and the message was sent by the operator at Huson upon request of this complainant, and the latter naturally should expect to pay for it.

Subject: Interchangeable Mileage.

Various Commercial Traveling Men, et al,

vs.

White Sulphur Springs & Yellowstone Park Railway Company.

The White Sulphur Springs & Yellowstone Park Railway connects with the C. M. & P. S. Ry. at Ringling, Meagher County, Montana, and extends thence to White Sulphur Springs, the distance being 22.9 miles.

This railroad was built in 1910, and owing to the sparsely settled territory traversed by it, a passenger rate of approximately four cents per mile was authorized by the Commission, while the standard rate on other lines in the state is three cents per mile.

Interchangeable mileage books containing 3,000 coupons, sold by all lines of railroad in Montana, excepting the Oregon Short Line, are accepted on all other lines of railroad, such mileage books being sold for $75.00, or two and one-half cents per mile. The W. S. S. & Y. P. Ry. Co., however, while accepting this mileage, did so on basis of local fares between points on its line, that is, mileage detachments were being made to equal four cents per mile traveled, and this was the subject of numerous complaints made to the Commission.

Much correspondence ensued, and finally, effective August 1st, 1912, it was arranged that interchangeable mileage of other lines' issue would be accepted by the W. S. S. & Y. P. Ry. Co. on basis of five-sixths of local fares. The Commission recommended this basis for the reason that two and one-half cents, the rate at which mileage is sold, is five-sixths of the standard rate of three cents per mile, and it therefore appeared that the same ratio on the line in question, would be fair to that company, and its patrons alike.

Minimum Freight Charge, Oregon Short Line Railroad.

At various times from May, 1911, to January, 1912, informal complaints were made to the Commission alleging that the freight minimum of 50 cents charged by the Oregon Short Line Railroad Company between points within the State of Montana, was unreasonable. In June, 1911, this question was taken up with the traffic department of the O. S. L. with a view to having the minimum reduced to 25 cents in conformity with the minimum charge made by practically all other lines in the state, but at that time, the O. S. L. could not see its way clear to comply with the Commission's recommendation, and the complainants declined to take formal action, in accordance with our Rules of Practice.

As stated, other complaints were received, and a very thorough investigation was made by the Commission to determine the reasonableness or otherwise of the 50-cent minimum, and it was decided, in view of the fact that on other lines in the state, as well as in many other states west of the Mississippi River, a minimum charge of 25 cents was the standard, to bring the matter to a hearing upon the initial motion of this Board. Before doing so, however, another opportunity was given the O. S. L. R. R. Co. to amend its tariffs as above, and under date of January 13th, Mr. J. A. Reeves, General Freight Agent of that company, acceded to the Commission's proposition to establish a minimum of 25 cents, same becoming effective February 15th, 1912.

Subject: Refund of Storage Charges.

Ruby Gulch Mining Company,

vs.

Great Northern Railway Co.

Complainant is engaged in mining at Whitcomb, Montana, and on March 11th, 1911, a shipment of mining machinery was made from Great Falls to Malta in error. It should have been shipped to Dodson. This freight, weighing 1500 pounds, was unloaded at Malta, where it remained until May 19th, during which time, complainant requested the railway company's agent on various dates, to have the shipment re-loaded and forwarded to proper destination. This, however, was not done, and eventually the consignee loaded it with his own force. $4.50 storage charges had accrued, which the complainant paid, and asked for reparation, claiming that it was the duty of the defendant to re-load these articles upon request, and furthermore, that the shipment had been allowed to remain outside at Malta exposed to the rain and had been thereby damaged. No claim, however, was made for damages, refund of storage charges only being requested.

The Commission holds that the fact of the shipment being left outside, would not release storage, as the property is still in the possession of the carrier company, and for which they are held responsible. There are no objections to allowing certain classes of freight to remain on the ground, which would not be damaged by weather conditions. However, it is the duty of the carrier to load or unload less than carload shipments of freight, and the defendant's failure or refusal to do so in this case, was responsible for storage charges having accrued. Accordingly, refund was made.

Subject: Rates on Pickles.

Martin Pickling Company,

vs.

Northern Pacific Ry. Co.

Complainant is engaged in the manufacture and sale of pickles at Huntley, Montana, and made informal complaint under date October 12th, 1911, alleging excessive carload rates on its product to various points within the state.

Upon investigation, it was found that complainant was prepared to manufacture pickles on quite an extensive scale, and would ship in carload lots to the distributing centers of the state if a more reasonable freight rate were accorded. A tentative schedule of carload rates was prepared by the Commission, based on 36,000 pound minimum, which, however, the Northern Pacific Railway Company could not see its way clear to accept, but submitted in lieu thereof, a schedule also based on 36,000 pounds minimum, slightly higher than the rates proposed by this Board.

Upon further investigation, it was learned that the M. P. Co. could use to considerable advantage, a minimum of 24,000 and if the railway company would reduce the minimum from 36,000 to 24,000, complainant was agreeable to the rates offered, and this proposition was accepted by the railway company. These rates while perhaps a trifle higher than they should be according to the Commission's opinion, enabled complainant, under the 24,000 minimum, to introduce its product in the various markets of the state, and in a short time, after a market has been secured, and cars of larger capacity may be loaded to one consignee, complainant anticipates a further reduction in rates, and the restoration of the minimum of 36,000 pounds.

Subject: Demurrage.

Swan Larson,
vs.
Northern Pacific Ry. Co.

This complainant is a coal dealer at Livingston, Mont., and complained that a car of coal consigned to him arrived at Livingston, November 15th, from Bridger, Montana. That he had an agreement with the defendant that all of his coal would be switched to his coal sheds unless otherwise ordered. That this particular car was not placed at his coal shed until Saturday, the 18th. That he unloaded a portion of it on that date, and the balance on the 20th. That he was charged $3.00 demurrage, which he claimed to be unjust.

Investigation developed that complainant has storage bins located at the east end of the house track, and that not all of his coal is switched to that point, some of it being unloaded from the public team tracks. This particular car arrived at Livingston 1:00 A. M. November 14th, and was placed on team track 8:00 A. M. Consignee was notified in the regular way at 12 noon same date. About two-thirds of the car was unloaded from team track, and at 3:00 P. M. the 17th, he ordered the car placed at his shed to finish unloading. The car was so placed, at 7:00 A. M. morning of the 18th, and made empty at 6 P. M. November 20th.

The free time on coal moving intrastate is 72 hours from the first 7:00 A. M. following placement. November 19th was Sunday, and it will be noted that the free time on this car expired at 7:00 A. M. Saturday, the 18th. The proper demurrage charge should have been $1.00 for the 18th, and $1.00 for the 20th, making a total of $2.00 instead of $3.00, which defendant admits was a clerical error, and refund of the overcharge was made.

Subject: Demurrage.

A. S. Gass,

Northern Pacific Ry. Co.

This complainant shipped four cars of hay from Roberts to Miles City, Montana, in November, 1911, two of which he loaded out within twenty-four hours, while on the other two, one day's demurrage accrued on each. The free time for loading hay is 48 hours, and complainant took the position that inasmuch as he had given the railway company the use of two of these cars 24 hours before his free time expired, he should not be charged for the other cars, which were held one day over time.

Rule 9 of the Demurrage Code provides for the "Average plan," under which, time gained on one car may be used to offset demurrage accured on another, but this complainant had not entered into the average plan agreement with the railway company, consequently he was not entitled to its provisions. The two days' demurrage was rightfully assessed under the rules, and complainant was requested to inform himself of the average plan by calling on any agent of the railway company.

FREIGHT RATES—BIG BLACKFOOT RAILWAY.

Refer to 1910-1911 annual report under caption, "Railroad Construction," wherein mention is made of the Big Blackfoot Railway connecting with the C. M. & P. S. at Bonner, Montana, extending approximately 11 miles to McNamara's Landing on the Big Blackfoot River.

On December 11th, 1911, application was made to the Commission for authority to establish the same schedule of rates on the Big Blackfoot Railway as then in effect on the White Sulphur Springs & Yellowstone Park Railway, which operates between White Sulphur Springs and Ringling, connecting at the latter point with the main line of the C. M. & P. S.

The W. S. S. & Y. P. Ry. was constructed in 1910, and owing to the sparsely settled and undeveloped territory traversed by it, the Commission, after giving the matter very careful consideration, authorized a scale of freight rates approximately 15 per cent. higher than the general distance tariff scale, and it was this schedule that the Big Blackfoot Railway sought to have authorized between points on its line.

The Big Blackfoot Railway was built for the purpose of connecting with the logging tracks of the Anaconda Copper Mining Company in the Camas Prairie district, and is not, therefore, dependent upon the development of that section for its tonnage, in the same manner as is the W. S. S. & Y. P. Ry. The B. B. Ry. will handle a large tonnage of logs destined to the saw mills at Bonner, and inasmuch as the conditions on that railroad are quite dissimilar to the W. S. S. S. & Y. P. Ry., the Commission did not approve of the same schedule of freight rates, which as stated above, is approximately 15 per cent. higher than the general distance tariff, and the latter was therefore adopted by the Big Blackfoot Railway, retroactive to November 4, 1911.

Subject: Overcharge.

W. R. Bollinger,

vs.

Northern Pacific Railway Company.

Complainant shipped one box "Clothing and bedding," from Eldora, Iowa, consigned to himself at Bearcreek, Montana, on which the Iowa Central Railway assessed first class rate from Eldora to Minnesota Transfer, while the Northern Pacific thence to Bridger, Montana, charged one and one-half times first class, giving as its reason, that the shipment was not released to valuation of $10.00 per cwt.

It will be noted that the shipment consisted of clothing and bedding, and under the classification, is entitled to first class rate without any stipulated valuation, notwithstanding that household goods must be released to the above figure in order to take first class rate.

The Northern Pacific Railway Company stated that the inspector for the Western Railway Weighing Association & Inspection Bureau reported the contents of this box to be of such a nature as to take one and one-half times first class rate, and requested an affidavit from the complainant to the effect that the package did not contain articles other than clothing and bedding. The Commission did not take this view of the matter, and did not ask complainant to make such an affidavit, which is entirely unusual, but on the contrary requested a copy of the W. R. W. A. & I. B.'s inspection certificate as evidence to show that the box did contain contraband articles. Such a certificate, however, was not furnished, but in reply to our request for same, the railway company agreed to and did pay the claim for overcharge, on March 23rd, 1912.

Subject: Rate on Lumber.

F. H. Drinkenberg,

vs.

Northern Pacific Railway Company.

Complainant is a resident of Hamilton, Montana, and made informal complaint under date of February 23rd, 1912, stating that he had about one million feet of lumber to ship from the southern extremity of the Bitter Root Branch, which is about one and one-eighth miles south of Darby, and that the railway company had asked him rate of six cents per cwt. thence to Hamilton, made up of two cents end of line to Darby, four cents beyond.

The movement in question was only 18.1 miles, and upon taking the matter up with the railway company, it was promptly arranged to apply the distance tariff of four cents per cwt. which covers distances not more than 20 miles.

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Subject: Rate on Beans, Carloads.

F. G. Pickering,

vs.

Northern Pacific Railway Company.

This complainant is a rancher residing near Joliet, Montana, and on behalf of himself and others engaged in the bean industry in that portion of Carbon County, took up with the Commission, the matter of freight rates to the Twin Cities, claiming that the present 5th class rate of $1.03 per cwt. was excessive, and forbade the marketing of their crop in the Twin Cities.

The information obtained showed that the bean industry was a growing one in that section of the state, and that St. Paul and Minneapolis furnished a steady market for this product. There was no disputing the fact that rate of $1.03 per cwt., carloads, was unreasonable, and upon taking the question up with the tarffic department of the railway company, it has been arranged to publish rate of 60c per cwt.

Subject: Freight Rates to State Fair.

W. H. Murry,

vs.

Northern Pacific Railway Company.

Complainant states that for a number of years, he has shipped racing stock from Bozeman, Montana, to Helena, Montana, to the State Fair, and complains that on all such shipments, he has been obliged to pay the regular tariff rates, and also full passenger fare for the attendant in charge; whereas, he cites special reduced rates on various kinds of exhibits to and from the State Fair at Helena each year.

It is true that special rates have been made applying on exhibits to the Fair, and also on the return shipment to the point of origin, but it has never been considered that race horses are "Exhibits," and are looked upon as "Attractions," the same as racing automobiles, flying machines, merry-go-rounds, etc. On these there has been no reduced rates, and it has never been the custom to pass a man free in charge of less than carload shipments, regardless of whether it was racing stock or ordinary shipments of horses.

In connection with this subject, the Commission recalls a case in another state where special rates were requested on race horses and racing paraphernalia, and at that time, one of the traffic managers gave it as his opinion, that race horses were a luxury, and in no way entitled to special consideration; that the patronage of Race Meets was extravagance on the part of the people, to meet which the carriers should not be required to shrink their revenue.

The Commission did not consider that this complaint was well founded, and no request has been made upon the carrier to classify race horses with exhibits, taking a reduced rate.

Subject: Classification on Tables.

Geo. Setzler,

vs.

Great Northern Railway Co.

Complainant is a furniture dealer of Billings, Montana, and complained of the freight rate charged on one folding table shipped by him from Billings to Judith Gap, Montana, on which rate of double first class was charged.

Complaint was accompanied by a cut of this particular table, showing the legs folded under, making a flat package. It was so folded when presented for shipment, wrapped in paper and burlapped.

It was very evident that an error had been made, as under Western Classification, "Tables, N. O. S. (except extension tables), K. D. or folded in packages, second class," and upon presentation of the facts to the defendant, it was agreed that this shipment was entitled to second class rate, and refund of the overcharge was promptly made.

Subject: Sleeping Car Fare.

L. E. Anderegg,

vs.

Great Northern Railway Co.

This complaint had reference to the sleeping car fare charged between Great Falls and Havre, and stated that until recently, the charge was $1.00, whereas at the present time, it was $1.50 for a lower berth, and $1.25 for an upper.

The rates quoted above are correct. The change was made effective November 15th, 1911. Prior to that time, persons wishing to take the sleeper at Great Falls could not do so until about 11 P. M., and were obliged to leave the car at Havre upon its arrival at 2:40 A. M., as the car did not set out there, but was sent east in train No. 2. In the opposite direction, one could not occupy this sleeper at Havre until the arrival of train No. 3, which, if on time would be 1:58 A. M., and it was on account of this rather semi service, that the rate of $1.00 was charged.

Commencing August 10th, 1911, an arrangement was made whereby the sleeper at Great Falls was ready for occupancy at 9 P. M. The same at Havre, and persons might, if they so desired, remain in the car until 8 o'clock the following morning, thus getting all night's rest. The Commission authorized the present rates of $1.50 and $1.25 respectively, for a lower or upper, and as a matter of fact, these rates are the same as those of the Pullman Company for similar service. In other words, standard, and the Commission does not feel that the Great Northern Railway Company is charging an unreasonable fare.

Subject: Alleged Overcharge.

F. H. Suddith,

vs.

Northern Pacific Railway Co.

Complainant is a resident of Fromberg, Montana, and in the early part of January, 1912, made a less than carload shipment of beans from Fromberg to Billings, Montana, on which rate of 24c per cwt. was charged. Complainant stated that he had some conversation with the agent at Fromberg, and that together, they looked up the classification and rate on this commodity, and that the tariff showed third class rate to be 21c, hence the claim for alleged overcharge of three cents per cwt

Beans, less than carloads, are properly third class. The third class rate, Fromberg to Billings is 24c. The third class distributing rate Billings to Fromberg is 21c, and it was necessary to advise this complainant that there had not been an overcharge, the difference being accounted for by the application of the distributing rate, which was fully explained.

Subject: Overcharge.

R. W. Wilson,

vs.

Great Northern Railway Co.

Complainant made a shipment of one boiler and a quantity of secondhand machinery from Butte to Sand Coulee, Montana, on which rate of 48c per cwt. was charged.

The matter was referred to the Commission, alleging an excessive charge, and it was found that the General Distance Tariff class "A" rate had been used instead of the distributing rate, making a difference of $14.25 in freight charges, which amount was promptly refunded.

Subject: Overcharge.

Inez Griswold,

vs.

Lehigh Valley Railroad Co.

This complainant made a less than carload shipment of household goods from Sayre, Pa., to Helena, Montana, weight of shipment 1850 pounds, and prepaid charges on basis of $2.23 per cwt.

Claim was presented to the Commission, alleging overcharge, and it was found on investigation, that the Syracuse, N. Y., rate on household goods would apply from Sayre, Pa., viz. $2.05 per cwt. Accordingly, the matter was taken up with the Lehigh Valley Company, and it was promptly admitted that an overcharge of 18c per cwt. had been made, which was refunded to complainant.

Subject: Collecting of Undercharges.

Silver Bow Commission Company,

vs.

Oregon Short Line Railroad Co.

Complainant is engaged in the commission business with principal offices in Butte, Montana. It would seem that some time prior to August 10th, 1911, (the date of shipment is not stated), complainant received a car of canteloupes from Chicago, to sell on commission. The melons were sold by complainant, and settlement made with the consignor after deducting the freight charges paid.

Some five or six weeks later, the Oregon Short Line Railroad Company presented a supplementary freight bill for $23.14 with statement that the freight charges as billed, were in error. Complainant felt that this additional charge was unjust, and referred the matter to his Commission on August 12th, 1911.

The shipment, of course, is an interstate one, and the matter was taken up informally with the Interstate Commerce Commission at Washington, D. C. It was not alleged by complainant that the supplementary charge was in excess of the legally published tariff, and the I. C. C. has held in many similar cases that there can be but one legal rate, and that, the rate on file with the Interstate Comerce Commission. Therefore, if the original charges, as billed, were not in accordance with the published tariff, it is not only the duty but the legal requirement of the defendant to render bill for the difference; otherwise the acceptance of the lower figure or rate would be a discrimination in favor of that particular shipment. The Interstate Commerce Commission holds that it is without jurisdiction to determine whether the shipper or the consignee should pay the additional charge under the circumstances, and that this question can only be determined by an edict of the courts, in the event that the interested parties cannot make amicable settlement.

Subject: Alleged Overcharge.

Enous Parsons,

vs.

Oregon Short Line R. R. Co., et al.

Complainant presented original paid expense bill covering shipment of 24 pieces of granite from Barre, Vermont, to Butte, Montana, on which the through charges amounted to 71c per cwt., making total charges on the shipment $323.33. Complainant stated that he had received a number of shipments of same commodity from the same quarry in Vermont, on which he had paid rate of 69c per cwt., therefore alleged that an overcharge existed of 2c per cwt., amounting to $9.11, and stated that he was entitled to rate of 24c from point of origin to the Missouri River.

We were unable to check any combination of rates that would make 69c through, nor was there, apparently, a rate in effect of 24c from Barre to Missouri River. However, in view of the position taken by complainant, we communicated with the Wabash Railroad Company, with a view of determining whether or not there was any such rate published on granite, and it was not found that there was at the time this shipment moved, or at any other time, a rate of 24c, which was alleged to have been made up on basis of 16c Barre to Chicago, 8c Chicago to Missouri River.

Complainant was requested to furnish the Commission with receipted expense bills covering the shipments which he claimed to have received, on which charges were assessed on basis of 69c per cwt. These receipts have not been furnished, and we are of the opinion that if any shipments of granite moved between Barre, Vermont, and Butte, Montana, at 69c per cwt., it was a clerical error, as no such combination of rates appears to have been in effect.

Subject: Rate on Cord Wood.

J. M. Schiffman,

vs.

Northern Pacific Railway Co.

Complainant is a contractor and dealer in mining timber, stulls, poles, cord wood, etc., at Butte, Montana. On October 29th, 1911, he caused to be shipped from Bearmouth, Montana, to Butte, Montana, a car of wood in eight foot lengths, which was accepted by the carrier's agent and billed as "Cord wood." Upon arrival at Butte, the classification was raised, applying the timber rate, and complainant took the position that he had been overcharged.

Upon investigation, it was found that this wood was not used for fuel, but was sold to a mattress manufacturing company, and made into excelsior. It will be noted, however, that this wood was in eight-foot lengths.

While this investigation was under way, a very similar case was presented to the Commission by the Chicago, Milwaukee & Puget Sound Railway Company. A car also shipped from Bearmouth to Butte, was receipted for and billed as cord wood, taking the cord wood rate, but had been raised by the Western Inspection Bureau to class "E" for the reason that the wood had been used for the same purpose, viz., making excelsior. The C. M. & P. S. Co. took issue with the Inspection Bureau, and asked this Commission for its ruling.

These two cars were loaded with exactly the same class of material, the only difference being that the N. P. car was eight foot lengths, the C. M. & P. S. four foot lengths, and the Commission held that cord wood per se was entitled to cord wood rate, regardless of what use the consignee made of it. He might use it for fuel, or for making picture frames, but the wood must be four feet long, in order to take the cord wood rate. The car of eight foot material was properly classified under the timber schedule, as material of that length is in the same class with poles, posts and piling.

Subject: Poultry for Breeding Purposes.

E. T. Crawford,

vs.

Northern Express Co.

Complainant is a resident of Foryth, Montana, and complained that the agent of the Northern Express Company had informed him that "The merchandise rate was $1.75 per cwt. for 186 miles, but owing to the fact that the rate was less than $2.00 per cwt., it would cost one and one-half times merchandise rates. In other words, $2.65, while it would only cost $2.00 per cwt. if I lived a few miles farther east, practically meaning that Miles City while farther east, has a better express rate west than Forsyth."

The rules of the express company are as follows:

> "Live poultry other than market, in slatted coops, between points where the Merchandise rate is less than $2.00 per 100 pounds is subject to 1½ times the Merchandise rates; and between points where the Merchandise rate is $2.00 or more per 100 pounds, is subject to Merchandise rates."

This, however, is modified in the following language:

> "The charge between two points where the Merchandise rate is less than $2.00 per 100 pounds, must not be greater than the charge at $2.00 per 100 lbs."

Under the scale of express rates promulgated by this Board, the Merchandise rate for distance 185 miles, is $1.75 per cwt., and for 215 miles, $2.00 per cwt. Under the rules above quoted, it would not be possible, however, for the express company to charge more for the transportation of poultry from Forsyth than would be charged from Miles City to the same destination, that is, the merchandise rate of $2.00 per cwt. could not be exceeded for distance of 186 miles.

ORE RATES

Camp Creek Branch, Northern Pacific Ry.

What is known as the Camp Creek Branch of the Northern Pacific Railway, extends from Manhattan to Anceney, approximately 15 miles, and was completed in the Fall of 1911.

Under date January 10th, 1912, the railway company made application to the Commission for authority to establish rates on ore from stations on this new line to Butte and Helena. The rates submitted for approval were found to be higher than the general scale of ore rates, varying from 6.3 to 10.1 per cent. There was no apparent good reason why ore shipments from this branch should be assessed a higher rate than from other sections of the state, and the application was not approved. In lieu thereof, rates were made on ore of the different valuations, to conform with the standard Northern Pacific ore rates of the state, thus placing the mines located on this branch on the same basis as other ore shipping points. These rates were made retroactive to November 1st, 1911, in order to cover certain shipments which had moved during the period that the question of rates was under consideration.

Chicago, Burlington & Quincy Railroad Co.—Passenger Rates.

Local Passenger Tariff No. 123-A, cancelling tariff 123, was issued April 5th, to become effective May 15th, 1912, and submitted to the Commission in the regular way for approval. The Commission, however, declined to affix its authorization, for the reason that same provided for a number of advances in rates between certain Montana stations, owing to one mile being adopted as the unit of distance, whereas heretofore passenger rates have been made on basis of the actual distance traveled. For example, from Billings to East Bridger the distance is 44.1 miles, and at three cents per mile figures $1.323, and in conformity with the Montana statute, which provides that "All charges for fares shall end in the figure 0 or 5, and such figure shall be the one nearest to the fare computed under the provisions of this act," the fare would be $1.30. Tariff 123-A made the rate $1.35, that is, the mileage was considered as 45, at three cents per mile, or an advance of five cents over the superseded tariff. Many such advances as this were contained in the tariff, which the Commission refused.

The Chicago, Burlington & Quincy Railroad Company cited rulings of other state commissions, and the courts of other

states, allowing the one mile unit. This, as will be noted, would mean an advance of five cents in many local fares, and would be in violation of Section 4349 of the Revised Codes of Montana, which provides that the maximum rate shall be three cents per mile, **for the distance traveled,** and if fractional miles were to be considered as one mile, a passenger would be, in many cases, overcharged for the reason that, as in the example given between Billings and East Bridger, he would be obliged to pay for nine-tenths of a mile for which no service was rendered by the carrier.

The Railroad Company had gone ahead with the printing of its tariff upon the assumption that this Commission would approve of same, and was therefore obliged to revise all Montana interstate rates where the mile unit had been used in the compilation of fares.

Subject: Alleged Overcharge.

Enos Parsons,

vs.

Oregon Short Line Railroad, and Butte, Anaconda & Pacific Railway Companies.

On Sept. 2nd, 1911, complainant shipped from Beaudines on the Oregon Short Line, one piece of rough stone, the actual weight of which was 1810 pounds, and complained to the Commission that charges had been assessed on basis of 5,000 pounds at first class rate of 20c per cwt., whereas stone, less than carloads, is classified as fourth class, this rate to Butte being 12c per cwt.

Rule 17, Western Classification, provides:

> "Shipments, including freight returned for repairs, loaded on open cars, are subject to a minimum charge equal to that for 5,000 pounds at first class rate for each car used."

The dimensions of the piece of stone in question were such that it could have been loaded in a box car, thereby taking fourth class rates at actual weight, but upon investigation it was found that this rock was loaded by the consignor on a flat car that happened to be at Beaudines, which is a non-agency station, without making any inquiry whatever from the railway company; and after it was loaded the agent at Feely was instructed to bill it out. Had the shipper informed himself beforehand, the charges on this stone would have been $2.17 instead of $10.00, but the Commission finds that the proper charge on basis of 5,000 pounds at first class, as assessed, was correct in accordance with the Classification, and that the shipper was at fault for not taking the matter up with the defendants' agent for instructions, before assuming to use the flat car which had not been placed on his order.

RATES ON COAL FROM TOSTON, MONT.

On April 9th, 1911, the Northern Pacific Railway Company made application to the Commission for authority to establish rates on coal, carloads, from Toston,

To Townsend	60c	per ton
Winston	75c	" "
East Eelena	85c	" "
Helena	90c	" "
Trident	75c	" "

and stating that a small coal property had developed in the vicinity of Toston, and shipping would commence at an early date.

Report and Order of this Commission, Order No. 26, was issued July 9th, 1909, following public hearings held April 14th and April 29th, 1909. Said order promulgated rates on coal, carloads, from all coal producing stations in the state, to all other stations. The schedule of rates thus made was based largely upon mileage, and made uniform the rates from the various coal producing sections on the various railroads. At that time Toston was not mining any coal, consequently no rates were named from that station. However, these rates are still in effect, and there appearing to be no reason why a higher shedule should be made from Toston than from other points, the Commission did not approve the application of the Northern Pacific to install the rates above quoted; on the contrary, submitted the following,

Toston to Townsend	50c
Winston	60c
East Helena	70c
Helena	75c
Trident	60c

same being in accordance with the rates as per Order 26 for like mileage.

The Northern Pacific Railway Company contends that in view of the fact that cars would be loaded at Toston by team haul, the tonnage per car would probably run lighter in order to avoid demurrage, and for this reason the standard schedule of rates should not apply. The Commission, however, took the view that Order 26 as of July 9th, 1909, was made after the subject had been given a great deal of consideration, and insisted upon the same rates being made from Toston as from other stations, so that uniformity would not be disturbed.

There was some delay in commencing shipments from this mine, and the rates named by the Commission were made effective January 1st, 1912.

Subject: Carload Rate, Mixed Fruit and Vegetables.

Lindsay & Company,

vs.

Northern Pacific Railway Company, and Chicago, Milwaukee & Puget Sound Railway Company.

Complainant is engaged in the wholesale fruit and produce business at various points throughout Montana, its principal place of business being in the city of Helena. By its complaint filed February 16th, 1912, descrimination was alleged, for the reason that the Chicago, Milwaukee & Puget Sound Railway had in effect a rate of 50 per cwt., minimum 30,000 pounds, on mixed fruit and vegetables from Missoula, Montana, to Lewistown, Montana, which rate also applied from Butte, the latter being an intermediate point. From Missoula or Butte to Lewistown, the business is handled exclusively by the C. M. & P. S. Ry. Helena and Butte are strong competitive points, but in order for Helena to reach Lewistown, the business must be handled by the Northern Pacific, Helena to Lombard, thence C. M. & P. S. to destination. There was no through rate in effect from Helena, and the combination of locals barred complainant from competing in the Lewistown market.

The distance, Helena to Lewistown via Lombard, is 209 miles, and from Butte 247 miles. It appearing to the Commission that Helena should be on an equal footing with Butte for this business, application was made to the lines interested to make the same rate, viz., 50c per cwt., minimum 30,000 pounds, from Helena, and effective April 15th, 1912, tariff was issued accordingly, without the necessity of formal action.

Subject: Stock Shipments.

Washington Meat Company,

vs.

Chicago, Milwaukee & Puget Sound Railway Company.

Complainant is engaged in wholesale butchery at Butte, Montana, and on October 17th, 1911, shipped eight cars of cattle from Moore, Montana, to Anaconda. Billing was changed on two cars to read Butte, the other six going through to original destination. Complaint was made alleging overcharge.

Upon investigation it was found that the total freight charges paid amounted to $453.60. The C. M. & P. S. tariff provides a rate of $43.00 per car in lots of 10 cars or more, from Moore to Anaconda, and also provides that the charges on less than 10 cars shall not exceed the trainload rate, but the shipment must be from one consignor to one consignee, and one destination, and had the eight cars gone through to Anaconda, the charges would have been 10 times $43, or $430.00, but the fact of changing the billing on two cars to read Butte, prevented this complainant from getting the benefit of the trainload rate. There was, therefore, no overcharge.

It might be stated that if trainload shipments were not restricted to "one destination," there would be nothing to prevent the setting out of a car or two at any intermediate station, and it should be understood that the trainload rate is made largely upon the basis of it being a through shipment, not involving intermediate switching.

Subject: Lumber Rates.

J. M. Schiffman,

vs.

Northern Pacific Railway Company, and Chicago, Milwaukee & Puget Sound Railway Company.

Complainant is a contractor and dealer in mining timber, stulls, ties, cord wood, poles, etc., at Butte, Montana, and made complaint against the rate of 10c per cwt. from Bearmouth and Clawson's Spur. Bearmouth is located on the line of both defendants, while Clawson's Spur is reached by the C. M. & P. S. only, eight miles west of Drummond. From the latter station to Butte the rate is 6½c, which rate complainant was of the opinion should be applicable from both Bearmouth and Clawson's Spur.

Upon investigation it was found that the 10c rate was originally made from Missoula, and applied from the stations in question on account of being intermediate points. By comparison, 10c per cwt. appeared to be out of line with rates from other lumber producing points where the service was practically the same, and while the Commission did not feel it would be consistent to request the carriers to publish the Drummond rate of 6½c, it did seem as though the rates should be reduced, and upon our recommendation that from Bearmouth on both lines, and from Clawson's Spur on the C. M. & P. S., a rate of eight cents be established, same was put into effect, without the necessity of formal action.

Subject: Alleged Overcharge.

W. J. Crittenden,

vs.

Northern Pacific Railway Co. and Great Northern Railway Co.

Complainant shipped from Bozeman, Montana, to Power, Montana, on February 8th, 1912, three cars of emigrant movables and stock via the Northern Pacific Railway and the Great Northern Railway through the Helena gateway; each car was billed at minimum 20,000 pounds, and charges prepaid at Bozeman through to destination on basis of two locals, viz., 24c and 28c, making the through charge 52c per cwt.

Upon arrival at destination, complainant was obliged to pay additional charges based on 77,400 pounds, to which he took exception.

Investigation developed that none of these cars was weighed on the Northern Pacific, there being insufficient time at point of origin, and at Helena the transfer was made to the Great Northern within one hour after arrival, consequently the Great Northern was requested to weigh the cars at Great Falls and advise correction, which was done, with the result that the actual weights as obtained on the track scales at Great Falls aggregated 77,400 pounds, as against 60,000 pounds, original billing.

The combination of rates making 52c per cwt. is correct in accordance with published traiffs, and it was necessary, therefore, to advise complainant that there was no overcharge.

Subject: Overcharge on H. H. Goods.

H. H. Bussian,

vs.

Northern Pacific Ry. Co., et al.

Complainant shipped two trunks of household goods from Chicago, March 25th, 1912, to Townsend, Montana, released valuation $10.00 per cwt., and prepaid charges thereon in the sum of $6.80. Upon arrival at destination, he was obliged to pay $10.32, making $17.12 in all, or one and one-half times first class rate. The two trunks were **crated.**

This shipment was handled via the Chicago Great Western Railway to Minnesota Transfer, and by the Northern Pacific Railway from that point to destination. Western Classification provides, "Less carload shipments of trunks filled with household goods must not be accepted unless boxed and strapped." Tariff of the N. P. Ry. Co. naming commodity rate from St. Paul provides, "Trunks containing Emigrants' Movables, less carloads, must not be accepted unless boxed." It will be noted that there is no provision made for trunks **crated,** and the Chicago Great Western Ry. should not have accepted the shipment unless boxed in accordance with its rules. Had this been done, the correct rate would have been 60c Chicago to St. Paul, $1.03 St. Paul to Townsend, making through charges on this shipment, which weighed 400 pounds, $6.52.

It appearing to the Commission that this complainant should not be called upon to pay for the receiving line's error, the matter was presented to claim department of the Chicago, Great Western, and refund obtained in the sum of $10.60.

BUTTE, ANACONDA & PACIFIC RAILWAY COMPANY, REFUND TO ANACONDA COPPER MINING CO.

The Anaconda Copper Mining Company shipped from Daly's Spur to Anaconda via Silver Bow and B. A. & P. Ry., several cars of silica rock in cars of 100,000 pounds capacity.

The tariff of the B. A. & P. Ry. Co., naming commodity rates on silica rock, provides that the minimum weight shall be "marked capacity of car." Seven of the cars so loaded weighed less than 100,000 pounds, and application was made to the Commission to authorize settlement on basis of actual weight, for the reason that there being no track scales at point of origin, a number of cars had been overloaded, and to guard against this and the possibility of causing accidents, the Operating Department of the Railway Company instructed the A. C. M. Co. not to load the cars above a certain designated line. These instructions were followed, with the result that the cars were slightly underloaded; hence the request for permission to make settlement on basis of actual weight, which, in view of the circumstances, has been authorized by the Commission.

Subject: Overcharge.

Albert Johnson,

vs.

Northern Pacific Ry. Co.

Complainant is a resident of Laurel, Montana, and on March 16th, 1912, shipped from New Salem, N. D., to Laurel, Montana, one car of Emigrant's Movables and stock, prepaying charges in the sum of $84.00, which the agent at point of origin advised complainant was the amount necessary to cover transportation charges through to destination.

When the car arrived at Laurel, it was accompanied by Stock Inspection Certificate showing that it contained 21 head, and charges were based on 24,000 pounds. As a matter of fact, there were only six head of stock in the car, and just how certificate calling for 21 head happened to be issued has not been made clear by the investigation. It was proven, however, that there were only six head, and upon such showing the charges were corrected on basis of 20,000 pounds minimum, entitling complainant to refund of $14.20, which was paid on June 21st, 1912.

MONTANA, WYOMING & SOUTHERN RAILROAD, WEIGHING CARS.

The Montana, Wyoming & Southern Railroad serves all of the coal mines operating in the Bearcreek field. Practically all of the mines are equipped with track scales under the tipple with the exception of the inside tracks, on which the small coal is loaded, and in order to obtain scale weights on the latter, it is necessary to switch the cars above the tiple, for which service the railway company asked the authority of the Commission to make a charge of $1.00 per car.

The M. W. & S. R. R. has no track scales of its own at any point on its line. The practice heretofore has been to weigh the coal at some point on the Northern Pacific. This has not proved satisfactory to the mine operators, as it necessarily delays invoicing until scale weights are obtained, hence the demand of the mines upon the railroad company to weigh the cars before being taken out. The railroad company's proposition to make a charge of $1.00 per car met with much opposition by the mine operators, and upon fully considering the physical and other conditions, the Commission held that inasmuch as the railroad company owns no scales of its own, on which cars could be weighed in transit, that a charge would be unreasonable for switching at the mines when this was necessary to obtain weights on scales which the mines themselves had provided. The Commission took the view that this was initial weighing, for which service it is not customary on any of the lines operating in the state to make a charge against the shipment.

The application was accordingly denied.

Subject: Minimum on Coal.

Smokeless & Sootless Coal Co.,

vs.

Montana, Wyoming & Southern R. R. Co.

Complainant is engaged in mining and shipping coal from the Bearcreek group of mines in Carbon County, Montana, served by the M. W. & S., and on May 27th, 1912, took up with the Commission the question of claims which had not been paid, varying from a few cents to $15.00 per car, based on minimum weights. The trouble appears to have been due to small capacity cars loaded with nut coal, the net weights of which were less than 40,000 pounds.

Tariffs provide for minimum weights depending upon the size of the car, but not less than 40,000 pounds, except cars having a marked capacity less than that figure, in which event the marked capacity will govern. The cars involved in this claim had a capacity of 40,000 or more, and accordingly freight charges were properly assessed on basis of that minimum, even though the actual weight was slightly less than that figure.

Subject: Alleged Overcharge.

Olmsted-Stevenson Co.,

vs.

Union Pacific Railroad Company, and Oregon Short Line Railroad Company.

Complainant is engaged in the mercantile business at Dillon, Montana. Informal complaint was made to the Commission December 30th, 1911, alleging that a car of corn shipped from Salina, Kansas, to Dillon, Montana, on January 17th, 1911, was overcharged, in that 50c per cwt. was assessed, while there was contemporaneously in effect a rate of 44c based on Barretts, viz., Salina to Barretts 40c, Barretts to Dillon 4c.

Investigation developed that this shipment originated at Leonardville, Kansas, and moved thence to Salina in September, 1910, at which point it was shelled. The freight charges paid, were based on combination of local rates Leonardville to Salina 7c, Salina to Dillon 43c, making the through charges 50c per cwt. as claimed.

At the time this shipment moved, there was in effect a rate of 43c from either Leonardville or Salina to Dillon, but this rate did not carry with it the milling in transit privilege. The tariff further provided for a through rate from Leonardville of 50c with privilege of shelling at a point not more than 75 miles from Leonardville. Salina via the shortest route is distant from Leonardville 94.2 miles. The rate would not, therefore, apply. Complainant's allegation that the through rate exceeded the combination of locals based on Barretts, was not found to be in accordance with the facts, and the rate of 50c per cwt. is not thought to be an unreasonable charge for the service, figuring 6.6 mills per ton mile, the distance being approximately 1500 miles.

Subject: Rate on Dairy Feed.

M. A. Cromwell,

vs.

Northern Pacific Ry. Co.

This complaint alleged as unreasonable rate of 24 cents per 100 pounds on dairy feed, less than carloads, from Hamilton, Montana, to Missoula, Montana, same being the fourth class rate for distance of 50 miles.

It was found that dairy feed was being shipped regularly from Hamilton to Missoula at the rate of about six tons per month, but carload shipments could not be made, which, if possible, would effect a considerable saving, as the carload rate on this commodity is 9 cents. The situation was informally explained to the railway company, and it was arranged to apply the Missoula distributing rates from points on the Bitter Root Branch to Missoula, making a reduction of 4 cents per cwt.

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Subject: Freight Rates from Kalispell.

Hamilton Lee,

vs.

Greath Northern Ry. Co.

This complaint was presented to the Commission through the Kalispell Chamber of Commerce, and alleged that the less than carload rates on fruit and vegetables from Kalispell to points on the main line of the Great Northern Railway east of Havre, Montana, were excessive.

Kalispell heretofore has enjoyed distributing rates as far east as Havre only, and the Commission's request upon the railway company to extend the application of distributing rates on fruit and vegetables was not only favorably considered by the railway company, but an amendment to tariff was issued, applying such distributing rates to all points within the state on the lines of the Great Northern Railway, on all commodities under the first four classes governed by Western Classification.

CARLOAD MIXTURE.

A question of general interest, and one quite as generally misunderstood, is involved in the following inquiry from the Missoula Mercantile Company in regard to certain mixtures of carload freight. The correct interpretation of the tariff is given in our reply.

"Missoula, Mont., Nov. 21, 1912.

Montana State Railway Commission,

Helena, Montana:

Gentlemen—The matter of the application of Item 1710, Page 164, in Transcontinental Freight Bureau Tariff No. 14 A, on a mixture consisting of agricultural implements, and iron, hand and wind mill pumps, from DeKalb, Ill., to Missoula, Montana, has precipitated quite a discussion between ourselves and officials of the Freight Department of the Northern Pacific Ry. Co., and I would be very much pleased to obtain your interpretation of this item as it stands, without taking into consideration the fact that it was probably not the intention of the carriers to permit this mixture.

The idea conveyed in Mr. Baird's telegram, a copy of which is attached, seems to me very unreasonable. It hardly seems probable, from the title page of the tariff and the instructions regarding application, etc., that it was the intention that this particular item, 1710, was to apply to the transfer only, and that beyond the pumps should be subjected to L. C. L. rates or be considered contraband goods. You will note that the first paragraph of this special commodity item reads: 'Agricultural implements and parts thereof, etc., on which Class A rates apply.' I maintain that this Class A is the basis of the charge from St. Paul to Missoula on agricultural implements, as per this item, and that the item of pumps being bracketed with agricultural implements entitles them to mix at the implement rate. There is no other commodity rate or special commodity rate on agricultural implements in this tariff or the Spokane tariff in which Class A is mentioned as a basis, nor is there another item that I have found where provision is made for one kind of a load at point of origin that would not be permitted at destination.

Placing a liberal construction on the item as it stands in the tariff, I cannot yet agree with Mr. Baird, and I would very much appreciate your opinion of the matter.

Thanking you for the favor, I beg to remain,
Yours very truly,
(Signed) O. C. GARLINGTON,
Traffic Manager."

Mr. Baird's telegram referred to above, reads:

"St. Paul, Minn., Nov. 15, 1912.—Missoula Mercantile Company, Missoula, Mont.: Yours yesterday you could use rate seventeen cents to Minnesota Transfer on entire shipment. No authority under tariff five hundred C or Western Classification to mix pumps without wind mills accompanying shipment. Same would be considered contraband freight subject to local rates.
J. B. BAIRD."

Helena, Mont., 11-27-12,

Missoula Mercantile Co., Missoula, Mont.

Gentlemen—We are in receipt of your letter 21st inst., File OCG 1121, in regard to the application of Item 1710, page 164, Transcontinental Freight Bureau Tariff 14-A.

Item 1710 is applicable from Galesburg, Ill., Davenport, Iowa, Grand Rapids, Wis., and certain other Illinois, Iowa and Wisconsin points, to points in Montana, the provision being that rates from such stations to Montana points will be the St. Paul rates plus 17c per cwt. The question then is: What are the St. Paul rates? Item 160, same tariff, names rates from St. Paul, Omaha, Kansas City, Denver, St. Louis and Chicago, to Montana points on articles classified as agricultural implements (except hand) under heading of 'Agricultural Implements,' in current Western Classification, vehicles and windmills. A foot note to this item provides that with shipments of windmills there may be included a sufficient quantity of certain articles (including iron or wooden pumps) to equip the windmills in the car, but aside from this reference, the item does not make any mention of pumps.

The points enumerated in item 1710 are ordinarily subject to Chicago or St. Louis rates. The rates from Chicago or St. Louis in Item 160 figure 20c per cwt. higher than the St. Paul rates. There is, however, a commodity rate in effect from the Illinois, Iowa and Wisconsin points named in item 1710 to St. Paul of 17c per cwt., and the Northern Pacific Railway and other lines operating west of St. Paul want to give Montana the benfit of this 17c rate, instead of charging the Chicago or St. Louis rate of 20c. Under the 17c rate, however, there is permitted a more liberal mix-

ture of articles than in Item 160, in that a specific provision is made for 'Iron Pumps (windmill or hand) and parts thereof.' The Northern Pacific makes reference in its tariff to the 17c rate, so that shipments from Iowa, Illinois and Wisconsin points will not be subject to the Chicago or St. Louis rate of 20c higher than St. Paul, but this commodity rate of 17c, it will be observed, applies only to St. Paul, when the mixture includes pumps. West of St. Paul there is no provision made in Western Classification for mixing pumps with agricultural implements, consequently there is no rate from St. Paul to Missoula on a car so loaded, and the pumps contained therein would be, as Mr. Baird's wire to you of Nov. 15th states, contraband freight and subject to local rates.

Yours very truly,

THE RAILROAD COMMISSION OF MONTANA.

By R. F. McLAREN, Secretary."

ORE RATES, CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY.

The Commission's "Regulation to Govern the Issuance and Transmittal of Tariffs, Supplements or Amendements Thereto," dated June 10th, 1909, requires that on and after July 1st, 1909, authority of the Commission must be obtained before any tariffs, supplements or amendments thereto shall be distributed to agents or others, such authority to be obtained by submitting proof copy, by letter, or by telegraph in emergency cases, it being understood that no authorization would be considered as given by implication, and the Commission will hold as an unlawful issue, any tariff, supplement or amendment not handled in accordance therewith.

We received from the Chicago, Milwaukee & Puget Sound Railway Company on January 8th, 1912, Supplement 3 to P. C. L. 85-C, effective February 7th, 1912, naming rates on ore from Baxter, Fergus and Hilger, stations on the "Hilger Extension," to Butte, such rates being 15c, 25c and 35c respectively higher than Lewistown. From the territory named, rates had not been heretofore in effect on ore, the line having been but recently constructed. Authority for publishing these rates had not been obtained from the Commission in accordance with its regulation referred to above, and same were not approved for the reason that these arbitraries over Lewistown made the rates excessive, and the carrier was required to cancel its supplement, and publish in lieu thereof rates on ores of various valuations as prescribed by the Commission, in conformity with other ore rates in the state. The necessity for this reissue would have been obviated had the tariff been handled in accordance with our Rules of Practice.

Between the date effective of Supplement 3 to P. C. L. 85-C, February 7th, 1912, and Supplement 4 to same tariff, March 13th, 1912, two cars of ore had been shipped from Hilger, taking the higher rates which the Commission had declined to approve, and the C. M. & P. S. Ry. Co. was required to make refund of the difference between the charges collected on these two cars and the charges as they would have been under the Commission's schedule.

Subject: Rates on Apples and Mixed Fruit.

Flathead Fruit Growers' Exchange,

vs.

Great Northern Railway Company.

Informal complaint was made Sept. 19th, 1912, as to the rates on apples from Somers, Montana, compared with rates from Wenatchee, Washington, to Montana points. Somers is situated at the head of Flathead Lake in an extensive apple growing section, and distant 11 miles from Kalispell, the latter also an apple shipping point. From Kalispell, commodity rates were in effect, but from Somers the Kalispell rates plus local of 9c per cwt. applied, and these complainants asked that the same rates be made from Somers as from Kalispell, thus placing the entire Flathead apple producing section upon an equal basis. Complaint further alleged that the rates on this commodity from the Flathead to points in Montana were unreasonable per se.

The complaint being informal, it was so handled with the Great Northern Railway Company, and it was promptly arranged that the rates from Somers should be the same as from Kalispell on apples, carloads, to points north, east and south of Shelby, Montana. This became effective Sept. 15th, 1912.

The Flathead Fruit Growers' Exchange had not presented its formal complaint to the Commission of the further unreasonableness of the rates on apples and fruit, and on Oct. 11th, 1912, the Great Northern Railway Co. made application to the Commission for authority to publish a new schedule of rates on apples in straight carloads, minimum 30,000 pounds, and fruit in mixed carloads, minimum 20,000 pounds, applying from Kalispell and Somers alike. The authority was granted, retroactive to Sept. 15th, in order that shipments which had already been made this season would get the benefit of the reductions.

The following table shows the old as well as the new rates to the various points, which, of course, apply as a maximum at intermediate stations:

FROM KALISPELL.

To—	Distance.	Apples. New Rate.	Apples. Old Rate.	Fruit. New Rate.	Fruit. Old Rate.
Great Falls	259	45	52	60	60
Helena	358	45	64	60	74
Havre	264	45	53	60	62
Butte	431	50	71	68½	83
Stanford	328	56½	60	70	70
Billings	493	56½	74	76½	87

FROM SOMERS.					
Great Falls	270	45	61	60	73
Helena	368	45	73	60	87
Havre	275	45	62	60	75
Butte	441	50	78	68½	96
Stanford	239	56½	69	70	83
Billings	504	56½	75	76½	100

When the amended tariff was received by the Commission it contained the following exception:

> "When the rate on apples in straight carloads is the same or lower than the rate on mixed carloads as provided above, the minimum weight will be 30,000 pounds on such mixed carloads when apples are included therein."

The object of this exception was to guard against shippers taking advantage of the tariff, and placing a few boxes of fruit in a car of apples in order to obtain the mixed carload minimum, and consequently lower charges per car. This exception, however, was not approved by the Commission for the reason that under its terms a car containing apples and other fruit would be charged the highest minimum, and also the highest rate (the fruit rate). This was thought to be unfair; at the same time the carrier is entitled to protection against imposition, and in lieu of the rule quoted above we recommended the following:

> "When apples are loaded with other fruits or vegetables, the charges on such mixed car shall not be lower than the charges on a minimum carload of apples (30,000 pounds), at the rates named above upon apples, straight carloads."

This substitute rule afforded the railway company protection and at the same time did not penalize the shipper who wished to mix apples with other fruit. The tariff was accordingly amended in accordance with our recommendations.

Subject: Rate on Coal.

Anaconda Copper Mining Co.,

vs.

Montana, Wyoming & Southern Railroad Company.

The Commission's Order No. 26, which went into effect August 1st, 1909, reduced the rate from 45c to 35c per ton on coal from the mines in Bearcreek field to Bridger, Montana, when destined to points beyond. The United States District Court issued an interlocutory injunction Octobed 3, 1910, using the following language:

> "That until the entry of an order upon the said motion, the complainant may make the same charge for transportation of coal per ton in carload lots upon its line destined to points beyond its own line, as were formerly in force prior to August 1, 1909, before the said Order No. 26 went into effect."

The Montana, Wyoming & Southern Railroad Company on October 7th, 1910, to become effective October 20th, issued Supplement 3 to its Tariff No. 1, restoring the rate of 45c, which was the same as in force prior to August 1, 1909, and referred to by the court in the injunction.

Complainant shipped certain cars of coal after the date of the injunction, October 3rd, and prior to October 20th, the date on which this supplement became effective. The M. W. & S. R. R. Co. applied rate of 45c to such shipments, while complainant took the position that the old rate of 35c was in effect until said Supplement No. 3 went into effect advancing the rate ten cents per ton. The District Court finally decided that the rate of 35c per ton was unremunerative, and declared Order No. 26 illegal and void, and in contravention of the Fourteenth Amendment to the Constitution. A perpetual injunction was granted, restraining the Commission against enforcement of said order, judgment being entered April 9, 1912.

The question appeared to be a legal one, and was referred to the Attorney General for his opinion, which holds that the defendant was legally within its right in assessing rate of 45c on the shipments involved in this complaint. We quote from the Attorney General's ruling in part as follows:

> "Prior to August 1, 1909, the proportional rate on through shipments of coal in carload lots from points on the line of the Montana, Wyoming & Southern Railroad Company to points beyond its line was 45c per

ton. On July 9, 1909, your Commission made an order providing that on and after August 1, 1909, said railroad should accept as a proportional rate, 35c per ton on coal in carload lots destined to points beyond its own line. The M. W. & S. Co. thereupon made an application for a re-hearing and increase this rate, which was on February 14, 1910, by your Report No. 32, denied. Thereafter on October 3, 1910, a suit was commenced by the M. W. & S. Co. against the Board of Railroad Commissioners in the Circuit Court of the United States, alleging that said order No. 26 and Report No. 32 were illegal and void, and in contravention of the Fourteenth Amendment to the Constitution, and praying that an injunction issue, restraining the enforcement of said order and report. A hearing was thereupon had, and the following temporary restraining order was issued by the court on Oct. 3, 1910:

'The complainant having moved upon the bill of complaint herein and various affidavits for an injunction during the pendency of this action against the defendants to restrain them and each of them and each and every person acting under or by virtue of the authority of the acts of the Legislature of the State of Montana and the order and report of the Board of Railroad Commissioners of the State of Montana specified in the bill of complaint from in any way enforcing the said order and said report and any provisions thereof against the complainant, and it appearing that the complainant demands and claims to be entitled to a decree against the defendants restraining the commission of the acts hereinafter enjoined upon the ground that they would result in irreparable injury to the complainant and would constitute a taking of complainant's property for public and private use without due process of law and without just compensation, and would constitute a denial to the complainant of the equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States, and would impair the obligations of the complainant's contract rights in violation of Section 10 of Article 1 of the Constitution of the United States and would result in a multiplicity of suits, and that the complainant has no adequate remedy at law for the injury which would result from the acts of the defendants, it is

ORDERED:

I. That until the entry of an order upon the said motion the defendants and each of them, their officers, agents, servants and employees and each and every person acting under and by virtue of the author-

ity of the said Act and the said Order No. 26 and the said Report No. 32, referred to in the bill of complaint, or any of them, be and they hereby are enjoined and restrained from in any way enforcing or attempting to enforce the said Act or the said Order or the said Report or any of the provisions thereof against the complainant.

II. That until the entry of an order upon the said motion the complainant may make the same charge for transportation of coal per ton in carload lots upon its line destined to points beyond its own line as were formerly in force prior to August 1, 1909, before the said Order No. 26 went into effect, notwithstanding the said Order and the Said Report, provided that within five days after the date hereof, it deposit in the National Bank of Montana of Helena, Montana, forthwith, the sum of One Thousand Dollars ($1,000) to be held in said bank subject to the order of the court, as security for the prompt deposit of the difference in rate charged as hereinafter provided; and provided further that at the end of ten days from the date hereof the complainant deposit in the said bank, as set forth, to the credit of this action, to be held subject to the order of the court, the exact difference between the thirty-five cent rate per ton and the rates charged during said ten days per ton, provided that said exact difference be further deposited at the end of every ten days thereafter, during the continuance of this order; and provided further, that with said excess charge so deposited, the complainant shall file with said deposit an affidavit of the number of tons of coal transported by it during each period of ten days, and the amounts received for the transportation thereof, and the names and addresses of each shipper thereof.

III. That the moneys so paid into the said depositary shall be by it received and held as a special deposit, to the credit of this action, and that the same should be paid out only on the draft of the clerk of this court, countersigned by a federal judge sitting in this court.

In the event of this order being dissolved or vacated, a special master will be appointed to ascertain and report as to the amount to be returned to each individual shipper, and as to the identity of such shipper.

IV. That the defendants and each of them show cause at a term of this court to be held at Helena, on the 20th day of October, 1910, at 10 o'clock A. M., why this order should not continue in full force and effect until the final hearing and disposition of this

cause thereat, and that the defendants serve upon the solicitor for the complainants affidavits which they may desire to use in opposition to complainants' said motion, 48 hours prior to any hearing thereon.

Dated October 3rd, 1910.

CARL RASCH, Judge.'"

Continuing in his opinion, the Attorney General says:

"Upon the trial of the cause, the court rendered its decision and entered a judgment thereon, in favor of the M. W. & S. R. R. Co. granting a perpetual injunction and restraining order against the enforcement of said Order and Report, which judgment was entered April 9, 1912. The restraining order of the court above quoted, prohibiting the enforcement of Order No. 26, fixing the 35c rate, and provided that the complainant may make the same charge for transportation of coal per ton in carload lots, upon its line destined to points beyond its line, as were formerly in force prior to October 1, 1909, which was 45c, and required a bond to be given to protect the shipments, which was done. This injunction was by the judgment of the court made permanent, and the 35c rate fixed by your Board declared unconstitutional and void. It was impossible for anyone to enforce the 35c rate after the injunction order of October 3, 1910, and this injunction order has never been set aside, but on the contrary, has been perpetually continued in force, as against the 35c rate. It is, therefore, apparent to me that the rate in force from the date of the injunction order, to-wit: Oct. 3, 1910, was the 45c rate prevailing prior to the taking effect of Order No. 26, regardless of the Supplement No. 3 issued by the M. W. & S. R. R. Co., to become effective October 20th. In view of the order of the court it was not necessary for the M. W. & S. R. R. Co. to issue this supplement.

You are therefore advised that in my opinion, the tariff in force between Oct. 3rd and October 20th, 1910, was the 45c rate prevailing prior to the taking effect of Order No. 26."

ESTIMATED WEIGHTS ON ICE CREAM.

Supplement No. 6 to Mont. R. C. No. 27, Northern Epress Company's Tariff No. 84-E, was submitted to the Commission for approval on August 26th, 1912, and under its terms, the estimated weights on shipments of ice cream by express were advanced as follows, and in order to make it perfectly clear, we quote the old and the proposed rules:

Old Rules.

"To determine weight of filled tub in excess of 10 gallon capacity, add to the weight of the 10-gallon tub 10 pounds for each gallon in excess of 10 gallons."

"When a tub contains two or more cans, to determine billing weight, use scale for number of gallons that is nearest, but less than number of gallons in tubs, and add 10 pounds for each gallon in excess. Example: Two cans of 3 gallons each in one tub, use estimated weight for 5 gallons (90 pounds) and 10 pounds for extra gallon, billing weight 100 pounds."

Proposed Rules.

"To determine weight of filled tub in excess of 10 gallon capacity, add to the weight of the 10-gallon tub, 15 pounds for each gallon in excess of 10 gallons."

"When tub contains two or more cans of ice cream, use estimated weight for each can as named above, adding together to obtain the way-billing weight. When gross weight of tub and contents exceeds 400 pounds, refuse, as it is impractical to handle shipments of this nature of a greater weight."

It will be noted that under the new rules, the excess over 10 gallons is to be estimated at 15 pounds instead of 10 pounds, and also when a tub contains two or more cans, the individual estimated weight of each is added together to obtain the billing weight instead of using the sliding scale quoted above.

It was at once obvious that under the proposed rules, a shipment of 15 gallons would take estimated weight 225 pounds as against weight of 200 pounds, or an advance of 12½ per cent. Again, under the proposed rules, if one 10-gallon and one 5-gallon can were contained in the same tub, the estimated weight would be 240 pounds as against 200 pounds, or an increase of 20 per cent.

In making its application to the Commission, the express company stated:

"Shippers take advantage of us in making one large

square box hold three or four five-gallon cans, and by adding only 10 pounds to the gallon, it does not make a fair estimate, as they put in much more ice than was considered when we made the estimates on the original 10-gallon tub, as the more tubs in the box, the more ice is required, while about 10 pounds to the gallon is about the actual net weight of the cream itself."

An investigation was made by the Commission to determine what effect the proposed changes would have on shipping within this state, with the result that we found that a 5-gallon can filled with ice cream, including the lid, but not packing, weighed 39½ pounds, and also that where 3 cans were packed in the same tub, there is a considerable saving in the amount of ice used. That is, 3 cans packed in one tub require just about the same quantity of ice as 2 cans packed separately, consequently there is a third less ice used, and an equal saving in the tare of the tub itself. That is to say, 3 single 5-gallon tubs weigh considerably more than one tub large enough to hold 3 cans. Furthermore, one tub containing 3 cans can be more easily handled that 3 separate packages, and would take up less space.

Upon this showing, the Commission declined to extend authority to the express company to put this supplement into effect, and the scale of estimated weights remained unchanged. No objection was offered on the part of the Board to limiting the gross weight of ice cream shipments to 400 pounds, as shipments of greater weight would probably require additional help to handle.

Subject: Overcharge on Automobile.

E. T. Motley,

vs.

Great Northern Ry. Co. et al.

On or about June 1st, 1912, complainant shipped one Ford Automobile from Abilene, Kansas, to Helena, Montana, consigned to himself, on which double first class rate was charged. This complaint was informal to the Commission and was so handled with the carrier companies, and alleged that two weeks prior to date of shipment, a car was ordered from the agent of the Union Pacific at Abilene, so as to give plenty of time to get a suitable car. The one furnished, however, was a 40 foot car, side doors, width 6 feet, height 7 feet 6⅞ inches. The machine would not go through the door if crated, and the agent at Abilene instructed complainant to put the machine in the car and then crate it, which was done; at the same time quoted rate of $3.37½ per cwt.

Upon arrival at Helena, the classification was raised to double first, or $4.50 per cwt., presumably based on Rule 14, Western Classification, which provides that articles must be boxed or crated in such a manner "as to allow of their being taken in and out of a car within the crate." This machine could not be removed from the car in the crate, but for the reason that the originating line furnished a car at its own convenience, not of such dimensions as would accommodate this shipment and comply with Rule 14 referred to, the Commission took the position that the correct and proper charge would be one and one-half times first class.

The claim was paid upon this basis.

Subject: Overcharge on Wheat.

Shaw & Stewart,

vs.

Northern Pacific Railway Co.

Complainant made a shipment June 27th, 1912, Big Timber to Butte, Montana, consisting of 130 sacks of wheat, weight 13,000 pounds, on which L. C. L. rate of 49c per hundred pounds was charged. It seems that defendant's agent at Big Timber informed complainant prior to date of shipment that the rate was 16 cents per cwt., minimum 30,000 pounds, and 21 cents per cwt. L. C. L., hence complaint as to overcharge.

The carload rate on wheat, Big Timber to Butte is 16 cents, minimum 36,000 pounds. The rate of 21 cents, as referred to above, is not a L. C. L. rate, but a carload rate, taking minimum of 30,000 pounds. It will be noted that the charges at local rate of 49c on this shipment amounted to $63.70, whereas the carload rate of 16c using 36,000 pound minimum, figures $57.60, and on the ground that the L. C. L. charges cannot exceed the carload rates, refund of the difference was made to complainant.

It is unfortunate that agents cannot be depended upon to correctly quote rates. The law provides that the only legal rate is that on file with this Commission, and in fact it could not be otherwise, regardless of what carriers' agents may quote. It would be unlawful to require one shipper to pay more than another for the same service rendered, through an error on the part of the railway company's employe.

BUTTE, ANACONDA & PACIFIC RAILWAY CO., REFUND TO ANACONDA COAL CO.

On February 16th, 1912, the Anaconda Coal Company caused to be shipped from Ravenna, Montana, consigned to themselves at Anaconda, Montana, one car of cord wood on which freight charges were assessed and paid at rate of $2.65 per cord. The car contained 12½ cords, making total charges $33.13.

Consignee objected to the rate charged, and it was conceded by the carrier that same was excessive and unreasonable in that it exceeded the rate charged for similar service from other stations of like distance. A rate of $1.87½ per cord was published by the B. A. & P. and became effective on March 23rd, 1912. Application was therefore made to the Commission to authorize the reduced rate on the shipment involved in this claim, and upon the understanding that no other shipment of wood has been made from Ravenna to Anaconda, prior to March 23rd, 1912, special authority of the Commission was granted to make refund in the sum of $9.68.

Subject: Storage on Baggage.

Con Schaefers,

vs.

Oregon Short Line R. R. Co.

This complainant related that he left Chicago at 9:50 P. M. June 5th, 1912, with transportation to Dillon, Montana, and that his baggage, which consisted of three pieces, reached Dillon before his arrival, and that he was required to pay storage, which he claimed was unjust; that he was not responsible for his baggage leaving Chicago on an earlier train of the same day.

Upon investigation it was found that Complainant left Chicago at 9:50 P. M. June 5th as stated, and that his trunks had been forwarded on a train some hours earlier, arriving at Dillon Saturday, June 8th. Complainant endeavored to get his baggage from the depot at Dillon Sunday, the 9th, but was unable to do so, there being no one on duty. Delivery was made the following day and storage had accrued. In view of the fact that complainant made an effort to secure his trunks on Sunday, the railroad company agreed that the storage charges were unfair, and accordingly made refund.

COMPLAINTS BROUGHT BY THIS BOARD ON BEHALF OF OTHERS, BEFORE THE INTERSTATE COMMERCE COMMISSION, IN WHICH DECISIONS HAVE NOT BEEN RENDERED.

INTERSTATE COMMERCE COMMISSION.

THE RAILROAD COMMISSION OF MONTANA in behalf of the BUTTE MACHINERY CO.,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY CO., and OREGON-WASHINGTON RAILROAD & NAVIGATION CO.,

Defendants.

The petition of the above named complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative board created by law, and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interestate Commerce Commission in behalf of any or all residents of the State of Montana where it appears that the provisions of the Interestate Commerce Act have been or are being violated; that the Butte Machinery Company is a resident of the State of Montana, engaged in the business of buying, selling and shipping mining machinery at Butte, Montana.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between points in the State of Montana and points in the States of Washington and Idaho, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the defendant, the Northern Pacific Railway Company, charges for the transportation of mining machinery, in carload lots, from Butte, Montana, to Mullan 60c; to Wallace 61c; to Rathdrum, Idaho, 75c; to Spokane, Wash., 78c per 100 lbs.; and to Wardner, Idaho, in connection with the Oregon-Wash-

ington Railroad & Navigation via Wallace, Idaho, 64c per 100 lbs.; minimum weight in each instance 24,000 pounds.

IV.

That the defendant, Northern Pacific Railway Company, for the transportation of mining machinery in less than carload lots, from Butte, Montana, charges in cents per 100 pounds, the following rates, governed by Western Classification:

Class Rates.

To—	1	2	3	4
Mullan, Idaho	120	102	84	72
Wallace, Idaho	122	104	85	73
Rathdrum, Idaho	150	128	105	90
Spokane, Wash	154	131	108	92

and to Wardner, Idaho, in connection with the Oregon-Washington Railroad & Navigation Company, via Wallace, Idaho, the following rates, governed by Western Classification:

1	2	3	4
128	109	90	77

V.

That each and all of the rates aforementioned for the transportation of mining machinery in carload lots, or in less than carloads, are unreasonable, unjust and discriminatory in violation of Sections 1 and 3 of the Act to Regulate Commerce and Acts amendatory thereof or supplementary thereto.

WHEREFORE, complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation an order be made commanding said defendants and each of them to cease and desist from the aforesaid violation of said Act to Regulate Commerce, and establish and put in force and apply as maxima in future to the transportation of mining machinery between the shipping and destination points named in paragraphs three and four hereof, in lieu of the rates named in said paragraphs, such other rates as the Commission may deem reasonable and just, and that such other and further order or orders be made as the Commission may consider proper in the premises and complainant's cause may appear to require.

THE RAILROAD COMMISSION OF MONT.,
By R. F. McLAREN, Secretary.

Dated at Helena, Mont., August 5th, 1911.

I. C. C. Docket No. 4356.
Heard by Examiner Pugh, Sept. 26th, 1912.
Complainant's brief submitted Oct. 21st, 1912.
Defendant given until Dec. 1, 1912, in which to file brief.

Docket No. 4356.

BEFORE THE INTERSTATE COMMERCE COMMISSION

THE RAILROAD COMMISSION OF MONTANA, in behalf of BUTTE MACHINERY CO.,

Complainant,

vs.

THE NORTHERN PACIFIC RAILWAY CO., THE OREGON-WASHINGTON RAILROAD & NAVIGATION COMPANY,

Defendants.

BRIEF ON BEHALF OF COMPLAINANT.

J. A. POORE,
Attorney for the Complainant,
Helena, Montana.

Complainant, the Butte Machinery Co., hereinafter called the Machinery Co., is engaged in the business of buying, selling and shipping mining machinery at Butte, Montana.

Complaint alleged unreasonable, unjust and discriminatory rates charged by defendants for the transportation of machinery in carloads and less carloads from Butte, Montana, to

Mullan, Idaho
Wallace, Idaho
Rathdrum, Idaho
Spokane, Wash.
Wardner, Idaho.

Wardner, Idaho, is located on the Oregon-Washington Railroad & Navigation Co., the other points being reached directly by the Northern Pacific Railway.

Mr. O. W. Tong, Rate Clerk for the Railroad Commission of Montana, which position he has occupied about five and one-half years, his previous experience embracing a period of ten years in the general offices of the Chicago, St. Paul, Minneapolis & Omaha Ry. at St. Paul and Omaha, testified for the complainant as follows:

CARLOAD RATES FROM BUTTE (5).

To	Mullan	60c cwt.
	Wallace	61c cwt.
	Rathdrum	75c cwt.
	Spokane	78c cwt.
	Wardner	64c cwt.

LESS CARLOAD RATES FROM BUTTE, (6, 7 and 8).

To—	Distances.	Classes. Subject to Western Classification. 1	2	3	4
Mullan	248 miles	120	102	84	72
Wallace	255 "	122	104	85	73
Rathdrum	350 "	150	128	105	90
Spokane	377 "	154	131	108	92
Wardner	266 "	128	109	90	77

All the rates enumerated are covered by Northern Pacific I. C. C. No. A-3072, with exception of the rates to Spokane, which are provided in Nor. Pac. I. C. C. 4892. (7).

All carload rates complained of are Class A. (8).

Answer of Northern Pacific admitted all the rates complained of to be effective except rate of 78c on carloads to Spokane.

The 78c rate to Spokane is the Class "A" distance rate for 377 miles, under section 3 of Nor. Pac. I. C. C. 4892. (12-13).

Complainant's Exhibit No. 1 (10) is as follows:

In Wisconsin, Minnesota, or North Dakota, state or interstate, as per N. P. I. C. C. 4690, rates are as follows, as compared with the rates attacked in this proceeding, and for ready reference, we have shown the rates in Wisconsin, Minnesota and North Dakota in red figures.

To—	Distance Miles.	C. L.	Less Carloads. 1	2	3	4
Mullan, Idaho	248	60	120	102	84	72
I. C. C. 4690	250	29	73	62	48	37
Wallace, Idaho	255	61	122	104	85	73
I. C. C. 4690	255	30	74	63	49	37
Rathdrum, Idaho	350	75	150	128	105	90
I. C. C. 4690	350	37	93	79	61	47
Wardner, Idaho	266	64	128	109	90	77
I. C. C. 4690	270	31	77	65	51	39
Spokane, Wash.	377	78	154	131	108	92
I. C. C. 4690	380	40	99	84	65	50

These figures are carried out in the following statements showing the comparison on a per ton per mile basis, and it will be noted that on carload business the rates from Butte are more than 200 per cent of the eastern rates, while the L. C. L. rates vary from 163 per cent to 176 per cent of the rates in these other states.

Rates Named Are in Cents Per Ton Per Mile.

To—	Carloads.	Less Carloads. 1	2	3	4
Mullan	4.83	9.67	8.22	6.77	5.80
I. C. C. 4690	2.32	5.84	4.96	3.84	2.96
Wallace	4.78	9.56	8.15	6.66	5.72
I. C. C. 4690	2.35	5.80	4.94	3.84	2.90
Rathdrum	4.28	8.57	7.31	6.00	5.14
I. C. C. 4690	2.11	5.31	4.51	3.48	2.68
Wardner	4.81	9.62	8.19	6.76	5.78
I. C. C. 4690	2.29	5.70	4.81	3.77	2.88
Spokane Wash	4.13	8.17	6.94	5.72	4.88
I. C. C. 4690	2.10	5.21	4.42	3.42	2.63

To—	Average ton mile (in cents) under the four classes.	Rates from Butte equal following percentages of Wisconsin, etc
Mullan	7.615	173%
I. C. C. 4690	4.400	
Wallace	7.522	172%
I. C. C. 4690	4.370	
Rathdrum	6.755	169%
I. C. C. 4690	3.995	
Wardner	7.587	176%
I. C. C. 4690	4.290	
Spokane	6.427	163%
I. C. C. 4690	3.920	

The carload rates from Butte equal the following percentages of the Wisconsin, North Dakota and Minnesota rates:

	%
To Mullan	206
Wallace	203
Rathdrum	202
Wardner	206
Spokane	195

The carload rate from Denver, Colorado, to Great Falls, Montana, a distance of 948 miles, is 70c cwt.; from St. Paul to Butte, a distance of 1128 miles, the rates is 87c cwt. (since reduced to 80c). (12)

In comparing rates complained of with rates in other localities on the Northern Pacific Ry. witness says: "The movement I have in mind is merely an imaginary movement as I did not take the trouble to figure out an actual route that a car could take, but it could be figured out. A car could be started at a point in Wisconsin on the Northern Pacific to be hauled into the state of North Dakota, a distance of 380 miles, and could be delivered to the Great Northern Railway at any junction point either on the main line or branch lines, and to be handled by the Great Northern Railway to any station on its line via the main or branch line, a distance of one hundred and fifty miles, and there be delivered to the Chicago, Milwaukee & St. Paul Railway and be handled back to Minnesota or any

point in North Dakota, a distance of one hundred miles, and the sum of the three local rates through the two junction points would figure the same as from Butte to Spokane, or seventy-eight cents per hundred. That haul over these three lines of railroad would be 630 miles." (13-14.)

The average revenue per ton mile over the Nor. Pac. for year ending June 30, 1911, was 9.03 mills. (14)

The rate of 78c cwt. on carloads to Spokane figures 41.3 mills per ton mile. (15)

The average revenue per ton on freight moved during year ending June 30, 1911, was $2.517 with an average haul of 278.82 miles. (15)

The carload rate Butte to Wardner is $12.80 per ton for 266 miles. (16)

ON CROSS EXAMINATION:

Mr. Tong did not have knowledge of the exact number of carloads complainant had shipped, or might ship; nor the amount of less than carload business. (17)

The complainant deals almost exclusively in second hand mining machinery. (18)

On account of the comparisons of rates in controversy with rates in Wisconsin, Minnesota and North Dakota, latter being applicable between any points in those states, it was not necessary to have particular points of origin and destination specified in those states (20) and while witness freely admitted there might not be a movement of mining machinery between those states, "There certainly is a movement of other classes of machinery subject to Class A rates, and those Class A rates are the identical rates that we are making a comparison with." (21)

The record contains considerable testimony brought out on cross examination from the witness, pertaining to the density of traffic and similarity of conditions in Wisconsin, Minnesota and North Dakota as compared with that between the points involved in the complaint. (22 to 37)

That the circumstances and transportation conditions between the points involved in the complaint were similar to those existing between many points in Wisconsin, Minnesota and North Dakota, there was no question in the mind of witness.

Mr. W. E. Alair, Assistant General Freight Agent, testifying for the Northern Pacific:

This witness thought machinery in the first place would move into Butte from Eastern Teminals or Denver, and then move out locally to Wallace, etc. He therefore compared the combination of carload rates from various eastern terminals to Butte and the local rates from Butte with the straight through rate from such eastern terminals, to Wallace, Spokane, etc. (38-39)

He was asked on direct examination "How does the movement of traffic in Minnesota and North Dakota compare as to density of movement with the movement of traffic between Butte and Mullan? Is there more or less?" (41)

Answer: "I could only answer that from general knowledge Mr. Donnelly, and I would have to say that in my opinion it is very much less between Butte and Wallace than it is in Minnesota (41), and again,

Q. Have you any idea what the grain movement is, for instance, between North Dakota and St. Paul?

A. No, I have not. (41)

On cross examination this witness says in effect: (41)

He had no figures upon which to base the information that movement between Butte and Wallace is very much less than the movement in Minnesota. (42)

He did not know whether when their rate of 78c was established from Butte to Spokane on carloads, they took into consideration the rates from St. Paul to Butte. (45)

Witness did not know whether the machinery was assembled at Butte?

He was not aware of there being **any movement** in there (Butte) to them, nor am I aware of there being movement to any one else that I could testify to. (49)

If he had seen any figures showing the actual traffic handled in Minnesota and North Dakota, he had forgotten them. (53)

ARGUMENT.

In every case questioning the reasonableness of freight rates, the complainant is forced, through circumstances entirely beyond his control, to rely to a very great extent upon comparisons of the rates complained of with rates on the same line, in the same locality or other localities, or with rates on other lines; the similarity of transportation and traffic conditions determines the value of the comparisons. The experience of the Commission in considering this feature of rate investigations

has undoubtedly convinced it of the utter impossibility of a complainant to show beyond a question of doubt the absolute similarity of conditions in one locality with those in another; and notice must necessarily be taken by the Commission of the comparisons where there is even but a slight variation of rates provided no reasonably satisfactory dissimilarity is shown in the traffic circumstances and transportation conditions.

We deny the justness to a complainant and allege an injustice to the public of any system of rate investigation that may arbitrarily permit a carrier to say "The comparisons are invaluable owing to a dissimilarity of circumstances and conditions." Some valid and reasonable explanation is justly due a complainant, the public and the Commission before the rates in one locality are permitted to continue either higher or lower than the rates in another locality.

Where, however, the rates in one community are conclusively shown to be lower than those in another locality on the same line, and the variation is not a small percentage but so great as to at once arouse the curiosity of any reasonable mind, can it be said **that the mere opinion of some traffic official with regard to dissimilarity of conditions is sufficient to justify the maintenance of the variation in rates?**

Now what did the complainant show in this case?

Rates between **all points in North Dakota, Minnesota or** Wisconsin, on carloads and less carloads an almost inconceivable percentage lower than rates between the specific points involved in the complaint.

Can it be reasonably said that such a condition represents the actual dissimilarity of conditions between the communities?

If it costs less to operate in the favored locality, isn't the carrier amply equipped to conclusively show the difference in cost. They did not in this case express even an opinion on the point; they did not know whether the traffic was heavier in the favored locality than in that embracing the point of origin and destinations involved in the complaint.

The revenue per ton per mile over the line of the Northern Pacific Ry. for the period ending June 30th, 1911, was 9.33 mills while the rate complained off of 78c per cwt. from Butte to Spokane, figures 41.3 mills or more than four times the average revenue for the period named.

We cannot believe that the defendant wishes any one to be-

lieve that this discrepancy in rate is but a reflection of the variation in conditions generally on the Northern Pacific, and those in district in which the higher rate exists.

And again, we may pertinently ask what line of argument could be produced that would make valid and reasonable, a charge of $12.80 per ton from Butte to the Coeur d'Alene country, which involves practically the same length haul as the average haul on the Northern Pacific Line, the revenue for the average haul figuring but $2.51 per ton.

The defendant, Northern Pacific, through its witness Mr. W. E. Alair, introduced Exhibit purporting to show the complainant to be favorably situated in his rate adjustment. We hesitate offering criticism of a defendant's line of argument but the defense by the introduction of said exhibit, becomes so manifestly absurd as to warrant us in not making any further comment than to say that complainant asked Mr. Alair on the witness stand if he would not have as much right for making his rate from St. Paul to Fargo, N. D., contingent upon the carload rates from New York to St. Paul, as to talk about rates from Butte to Spokane, etc., being based in any measure upon the carload rates from Eastern Terminals, etc., into Butte.

Unfortunately, the complainant in fact, did not appear and the record does not disclose, therefore, the actual amount of business that has been transacted, or that might be transacted in carloads or less than carloads. This, however, is altogether immaterial for the reason that the Commission has on numerous occasions, held that the amount of traffic, be it great or small, does not constitute sufficient reason for discrimination.

If there is any dissimilarity in the traffic circumstances and operating conditions, as between North Dakota, Minnesota and Wisconsin, state or interstate, and those existing west of the Rocky Mountains, it is surprising that the carrier companies in rate investigations of the character of this, have never seen fit to furnish the Commission with any figures that would substantiate in the slightest measure, such allegation.

INTERSTATE COMMERCE COMMISSION.

Board of Railroad Commissioners of the State of Montana, in behalf of CONRAD MERCANTILE COMPANY,

Complainant,

vs.

GREAT NORTHERN EXPRESS COMPANY,

Defendant.

The petition of the above named complainant respectfully shows:

I.

That the Board of Railroad Commissioners of the State of Montana is an administrative Board, created by law and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interstate Commerce Commission, to protect the interests of the people, where it appears that the provisions of the Federal Act to Regulate Commerce have been or appear to have been violated. That the complainant in fact, Conrad Mercantile Company, is engaged in a general merchandise business at Conrad, Montana.

II.

That the defendant above named is a common carrier engaged in the transportation of property by railroad between points in the State of Washington, and points in the State of Montana, and as such common carrier, is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the defendant has in force and effect from Wenatchee, Wash., to Conrad, Mont., a rate of $2.25 per 100 pounds on fruit, in lots less than 2,000 pounds, and a rate of $1.75 per 100 pounds, on fruit in lots of 2,000 pounds or more; that the rate on fruit in any quantity, from Wenatchee, Wash., to Butte, Mont., is $1.75 per 100 pounds. That Conrad, Mont., is directly intermediate between Wenatchee and Butte.

IV.

Complainant alleges that the rates named in paragraph III are set forth in Great Northern Express Company's I. C. C. No. 114, effective July 25, 1911; that the charging or demanding of any higher rate from Wenatchee to Conrad on fruit, in

any quantity, than that charged and demanded for the transportation of fruit in any quantity, from Wenatchee to Butte, is in violation of Section 4, of the Act to Regulate Commerce, as amended or supplemented:

V.

WHEREFORE, petitioner prays that the defendant may be required to answer the charges herein; that after due hearing and investigation, an order be made commanding the defendant to cease and desist from the aforesaid violation of the Act to Regulate Commerce; to establish and put in force for the future, a rate that shall not exceed the rate to the further distant point, on the same line, and in the same direction; to pay to the complainant in fact, by way of reparation, the difference between the rate charged and collected from complainant in fact, and rate of $1.75 per 100 pounds, with interest thereon; and that such other or further order or orders be made as the Commission may consider proper and complainant's case may appear to require.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of CONRAD MERCANTILE COMPANY,

By R. F. McLAREN, Secretary.

Dated at Helena, Mont., Sept. 18, 1912.

I. C. C. Docket No. 5199; not heard.

INTERSTATE COMMERCE COMMISSION.

THE RAILROAD COMMISSION OF MONTANA, in behalf of OLMSTED-STEVENSON CO.,

Complainant,

vs.

THE OREGON SHORT LINE RAILROAD CO.,

Defendant.

The petition of the above named complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative board created by law, and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interstate Commerce Commission in behalf of any or all residents of the State of Montana, where it appears that the provisions of the Interstate Commerce Act have been or are being violated; that the Olmsted-Stevenson Company is a resident of the State of Montana, engaged in the business of buying, selling and shipping implements, hardware, grain and grain products:

II.

That the defendant above named is a common carrier engaged in the transportation of passengers and property by railroad between points in the State of Idaho, and points in the State of Montana, and as such common carrier is subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the complainant, Olmsted-Stevenson Company, caused to be shipped from Rigby, Idaho, to Dillon, Montana, on July 20th, 1911, one car of flour and millstuffs, weight 39,600 pounds, for which service the defendant charged and collected rate of 25 cents per 100 pounds, or a total charge of $99.00.

IV.

That said charge for the transportation of flour and millstuffs in carloads from Rigby, Idaho, to Dillon, Montana, was at the time of movement and still is, unreasonable, discriminatory and unjust, and in violation of Sections 1 and 3 of the

Act to Regulate Commerce, or as it may have been amended:

WHEREFORE, complainant prays that the defendant may be required to answer the charges herein; that after due hearing and investigation an order be made commanding the defendant to cease and desist from the aforesaid violation of the Act to Regulate Commerce; to establish and put in force for the future, a reasonable and just rate for the transportation service herein involved; to pay to the complainant in fact, by way of reparation, the difference between a reasonable and just rate, and the rate of 25 cents per 100 pounds charged, together with interest, and that such other or further order or orders be made as the Commission may consider proper and complainant's cause may appear to require.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of OLMSTED-STEVENSON COMPANY,

By R. F. McLAREN, Secretary.

Dated at Helena, Mont., April 18th, 1912.

I. C. C. Docket No. 4824.

Heard by Examiner Pugh, Sept. 27th, 1912.

INTERSTATE COMMERCE COMMISSION.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of HELENA LIGHT & RAILWAY COMPANY,

Complainant,

vs.

THE DENVER & RIO GRANDE RAILROAD COMPANY,
THE OREGON SHORT LINE RAILROAD COMPANY,
THE NORTHERN PACIFIC RAILWAY COMPANY,
THE GREAT NORTHERN RAILWAY COMPANY,

Defendants.

The petition of the above named complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative Board created by statute, and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interstate Commerce Commission in any case where the Federal Act to Regulate Commerce has been or appears to have been violated. That the Helena Light & Railway Company, the complainant in fact, is a corporation organized under the laws of the State of Connecticut, and is engaged in the manufacture and sale of gas for heating and lighting purposes, in the city of Helena, Montana, in which city its principal offices are located.

II.

That the defendants above named, are common carriers engaged in the transportation of passengers and property by railroad between stations in the State of Utah and stations in the State of Montana, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That complainant in fact obtains its supply of coal from which to manufaucture heating and illuminating gas, from Sunnyside, Utah, located on the line of defendant, Denver & Rio Grande Railroad Company, via which line said coal is transported to Ogden, Utah, thence via defendant, Oregon Short Line Railroad Company, to Silver Bow, Montana, thence

via defendant, Northern Pacific Railway Company, to Helena, Montana.

That the freight rate on coal from Sunnyside, Utah, to Helena, Montana, via the lines of these defendants, is $5.00 per ton of 2,000 pounds, minimum weight depending upon the capacity of car used; that said rate has been in effect for more than two years last past, and is now carried in D. & R. G. tariff No. 4833-A, O. S. L. No. 2205-M, N. P. No. 1047-B, G. N. No. 22,-479; I. C. C. No. 2254; which rate your complainant alleges is unreasonable, excessive, and discriminatory, and therefore in violation of the Act to Regulate Commerce.

IV.

That the distance from Sunnyside, Utah, to Helena, Mont., via Silver Bow Junction and Northern Pacific Ry. is 676.9 miles; and via Butte and Great Northern Railway is 661.1 miles, whereby it will be observed that the rate figures about 7.45 miles per ton per mile; while the distance Sunnyside to Butte is 588 miles, and the rate on coal is $3.50 per ton, carried in same tariff as per Paragraph III hereof, figuring 5.95 mills per ton per mile, and for a **shorter haul.**

V.

That complainant in fact has received during the past two years, approximately 4,000 tons of coal from Sunnyside, Utah, on which it has paid the rate of $5.00 per ton; all of which movement was via defendant, Northern Pacific Railway from Silver Bow Junction. That is to say, none of this business has been brought into Helena by defendant, Great Northern Railway Company.

VI.

That while it may not be material to this proceeding, complainant in fact desires to state that coal suitable for the purpose of manufacturing gas, cannot, so far as it has been able to discover, be obtained at any point closer to Helena, than the mines at Sunnyside, Utah. That it has tried the various coals mined nearer at hand, but without success, and must therefore, continue to receive its supply from that only source; such supply averaging about fifty cars per year.

WHEREFORE, your complainant prays that the defendants may be severally required to answer the charges herein set forth; that after due hearing and investigation an order be made commanding said defendants and each of them, to cease

and desist from the aforesaid violation of the act to Regulate Commerce, and to put in force, to apply as a maxima in future to the transportation of coal between the shipping and destination points named in Paragraph III hereof, in lieu of the rates named in said paragraph, such other rates as the Commission may deem reasonable and just, and pay to complainant in fact by way of reparation, for the unreasonable, excessive and discriminatory charges hereinbefore described, the difference, together with interest, between such rate as the Commission may name, and the charges as paid, the latter to be determined upon presentation of the original freight receipts; or such other sum as in view of the evidence to be adduced herein, the Commission may consider complainant in fact entitled to; and that such other and further order or orders be made as the Commission may consider proper in the premises and the cause may appear to require.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of HELENA LIGHT & RAILWAY COMPANY,
By R. F. McLAREN, Secretary.

Dated at Helena, Montana, March 21st, 1912.

I. C. C. Docket No. 4773.

Heard by Examiner Pugh, Sept. 27th, 1912.

Complainant's brief submitted Oct. 16th, 1912.

Defendant given until Dec. 1st, 1912, in which to file brief.

Case set for oral argument at Washington, D. C., December 13th, 1912.

Docket No. 4773.

BEFORE THE INTERSTATE COMMERCE COMMISSION

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of HELENA LIGHT & RAILWAY COMPANY,

Complainant,

vs.

THE DENVER & RIO GRANDE RAILROAD COMPANY,
THE OREGON SHORT LINE RAILROAD COMPANY,
THE NORTHERN PACIFIC RAILWAY COMPANY,
THE GREAT NORTHERN RAILWAY COMPANY,

Defendants.

BRIEF IN BEHALF OF THE COMPLAINANT.

J. A. POORE,
Attorney for the Complainant,
Helena, Montana.

STATEMENT OF THE CASE.

The Helena Light & Railway Company, hereinafter called the Light Co., is a corporation engaged in the manufacture and sale of gas for heating and illuminating purposes at Helena, Montana. Coal used in the manufacture, comes from Sunnyside, Utah. The rate complained of is $5.00 per net ton, minimum weight marked capacity of car from Sunnyside, Utah, to Helena. The coal moves via

D. & R. G. Sunnyside to Ogden	192	miles
O. S. L. Ogden to Silver Bow	389.3	"
Nor. Pac. Silver Bow to Helena	95.8	"
TOTAL	677	"

Another available route is,

D. & R. G. Sunnyside to Ogden	192	miles
O. S. L. Ogden to Butte	396	"
G. N. Butte to Helena	73	"
TOTAL	661	"

The last named route has not been utilized owing to location of Light Co. on tracks of the Northern Pacific Ry.

Answers of the defendants, save that of the Oregon Short Line, admit the rate to have been $5.00 per ton, but reply of the O. S. L. alleges "that the only lawful rate on coal between said points is $5.10 per ton, which rate became effective De-

cember 27th, 1911, as set forth in Supplement 7 to D. & R. G. Tariff No. 4833-A (D. & R. G. I. C. C. No. 2254)."

Supplement 7 to I. C. C. 2254 undoubtedly did name a rate of $5.10 or 10c per ton higher than the rate complained of.

Complainant alleges the unreasonableness of rate of $5.00 per ton; the rate having been advanced from $5.00 to $5.10 merely aggravates complainant's case.

Reparation is asked.

THE EVIDENCE.

For Complainant—

Mr. G. A. Strain, Superintendent Gas Department of the Light Co., which position he has occupied for six years:

Tested every gas coal that has come to the city, and the Sunnyside coal is the only good gas coal. (6) Amount used for making gas is five tons per day. Light Co. stocks up during summer. (7)

Mr. O. W. Tong, Rate Clerk, Railroad Commission of Montana for five and one-half years, about ten years previous rate experience:

Distance Sunnyside to Helena via Silver Bow and Northern Pacific is 677 miles. (10)

Distance Sunnyside to Butte is 588 miles. (10)

Rate Sunnyside to Helena, $5.00 per ton. (10)

Rate Sunnyside to Butte, $3.50 per ton. (11)

Rate per ton mile, Sunnyside to Helena, 7.38 mills. (12)

Rate per ton mile, Sunnyside to Butte, 5.95 mills. (11)

Rate Red Lodge, Mont., to Spokane, distance 644 miles, $3.50 per ton, or 5.43 mills per ton mile. (14)

Rate Bearcreek, Mont., on Montana, Wyoming & Southern R. R. to Spokane, distance 669 miles, $3.60 per ton, or 5.36 mills per ton mile. (14)

Rate Sheridan, Wyo., to Spokane, distance 786 miles, $4.45 per ton, or 5.55 mills per ton mile. (15)

Rate Sheridan to Billings, distance 143 miles, $1.00 per ton, or 7 mills per ton mile. (15)

In the State of Montana, for a distance of 100 miles, the coal rate figures $1.00 per ton or 1 cent per ton mile. (15)

In the State of Montana, for distance 73 miles, the coal rate figures 90c per ton or 12 mills per ton per mile. (15)

Rates of $1.00 and 90c for 100 mile and 73 mile hauls in Montana, are generally effective in the State for mountain or prairie country hauls. (17)

Rate of the Great Northern Railway from Sand Coulee, Mont. to Butte, distance 186 miles, is $1.45 per ton.

The rate per ton mile Sunnyside to Helena, 677 miles, is higher than for haul of 143 miles on Burlington R. R. Sheridan to Billings. (18)

For Defendant, Oregon Short Line, Assistant General Freight Agent, Mr. D. R. Gray:

"The Oregon Short Line * * * figures that the rate is a reasonable rate, **because out of our proportion of two dollars and twenty-five cents, * * * our rate per ton per mile figures 5.7 mills,** while our rate per ton per mile on the business from Kemmerer, * * * from which points we have a rate to Butte of $3.25, our rate per ton mile is 7.4 mills, * * * and we have in effect, the Interstate Commerce Commission's approval on our rate of $3.25 from Kemmerer to Butte, as brought out in the case of the Southern Idaho Commercial Leagues. * * * " (22) (18 I. C. C. 562)

In re case of Consolidated Fuel Co. vs. A. T. & S. F. 24 I. C. C. 213, Mr. Gray states: "In that case they (the Commission) established an order from main line points on the Rio Grande * * * to all points from which rates are carried from the Rock Springs mines on the Union Pacific on a basis of 25c **per ton higher than the Rock Springs rates, which are incidentally the same as the rates from Kemmerer to the same points—in this order the Commission recognizes the difficulties on the line between Price, Utah, Castle Gate and Pocatello, and has justified the increase of 25c per ton, over the rates from Wyoming fields."** (24)

Speaking of difficulties of operation:

"I understand that the haul between Ogden and Butte is a very difficult haul so far as altitude is concerned. * * *" (26)

And speaking of the D. & R. G. Line: (28)

"Between Mounds and Ogden, it is generally understood that the D. & R. G. has very extraordinary physical difficulties. Over the Soldier Summit they have—I do not know what the altitude is, but they have a four per cent grade there on one side and a two per cent for about 25 miles on the other, and their engine capacity is about one-third normal over that grade."

On cross examination:

In re coal tonnage to Butte and Anaconda, witness thought

the proportion from Sunnyside was small as compared with other points (39), and for that small tonnage to Butte, the rate charged was $3.50. (40)

The rate of $3.50 Sunnyside to Butte is made regardless of the difficult operating features they have to contend with, but the physical conditions that exist on route Sunnyside to **Helena are taken into consideration in combating the attempt to reduce it.**

The O. S. L. proportion of through rate is $2.25 per ton. (45)

The D. & R. G. proportion is $1.35 per ton (45) leaving $1.50 for the haul Silver Bow to Helena. (45)

Witness did not profess to have knowledge of the lines between Butte and Helena. (46)

The haul from Sunnyside to Ogden is 192 miles. (51)

ARGUMENT.

Complainant alleged **discrimination.** We can conceive, and do know of instances where transportation conditions justify higher rates per ton mile to longer than intermediate points over the same lines.

Can a carrier arbitrarily say, "For this 677 miles over three lines, we will charge 7.38 mills per ton mile, but for this 588 miles, which is included within the 677 miles, we will charge 5.95 mills per ton mile?" We think not. **Some** justification should be shown, but was not.

One important defendant, the Northern Pacific, although represented by counsel, had no witness. The D. & R. G. was indirectly represented by the Oregon Short Line.

What did this witness say to indicate **any single condition that existed** in the haulage of coal from Sunnyside to Butte, that did not exist in the haulage to Helena, save only the longer haul and the addition of one line in the route?

In Con. F. Co. vs. A. T. & S. F. 24 I. C. C. 213, the Commission said, after considering conditions on the D. & R. G. et al.: "In all cases on the other hand, Utah coal moving to such destinations involves a two-system haul, and a two or three-line movement. This is a factor not infrequently recognized in rate construction, but we attach little importance to it here."

Witness told on direct examination what a splendid coal business they did in Butte and Anaconda, as compared with Helena; but on cross examination he readily admitted the

coal tonnage from Sunnyside to Butte to be very small. It was not shown by him that he had any more business from Sunnyside to Butte than to Helena.

The volume of business then did not apparently control the rate to Butte.

Was competition the controlling feature in making the Butte rate? Witness said the rates from Sunnyside were controlled by the rates from Kemmerer. Why are they so controlled, we ask. The coal does not compete with Kemmerer coal, for it does not appear to have been used in Butte for other than gas purposes.

But if we should imagine, just for the sake of argument, that competition does control the rate, and that a reasonable basis would be 25c or 35c over the Kemmerer-Butte rate, then may we not consistently and rightfully ask about the Kemmerer-Helena rate? That rate does not exist. Can it be said that Helena is not a competitive market on coal generally?

An examination of the records does not, therefore, disclose any peculiar competitive conditions to warrant the discrimination.

If there existed other reasons, such are not touched upon in the record.

Complainant alleged the rate was unjust.

What can be more unjust than the discrimination related above? But aside from that—what about the rate in other districts similarly situated. Here we have a rate Bearcreek to Spokane—669 miles, $3.60 per ton, or 5.36 mills per ton mile. This business originates on the Montana, Wyoming & Southern R. R., a small line; surely no one would say that the physical conditions on the line to Spokane were so dissimilar to those Sunnyside to Helena, as to warrant such an enormous difference in rate.

Defendants laid great stress upon the cases of Con. Fuel Co. vs. A. T. & S. F. et al., 24 I. C. C. 213, and League of Southern Idaho Commercial Clubs vs. O. S. L. et al., 18 I. C. C. 562.

In the former case, the Commission did not apparently, give any consideration to the question of rates from D. & R. G. mines to Helena. The question appears to have been with regard to those destinations to which through rates were already effective from Rock Springs.

In the other case we fail to find anything that would tend to

in any manner warrant a conclusion of the reasonableness of a $5.00 or $5.10 rate, Sunnyside to Helena; in fact the contrary appears. That case (which was by defendants made a part of the records here) indicates a rate of $4.00 Rock Springs to Portland, a distance of 991 miles, or 4 mills per ton mile, as compared with our rate of $5.00 or $5.10 for 677 miles, or 7.38 mills per ton mile, and the Commission in the Con. Fuel Case, supra, ordered the rate **from the D. & R. G. mines 25c higher.**

Again the rate ordered effective in the case of League of Southern Idaho, supra, from Rock Springs to Weiser, Idaho, (563 miles), was $3.50, meaning in reality a rate under the Con. Fuel case of $3.75 from D. & R. G. points located practically the same distance from Weiser as Helena. If $3.75 D. & R. G. points to Weiser, Idaho, is a reasonable rate, what can we call $5.00 D. & R. G. points to Helena?

A great deal was said as to the division of the through rate Sunnyside to Helena. Defendant O. S. L. voluntarily brought the matter into question, and very naturally it was followed up. It is pertinent and throws some light on the subject.

The D. & R. G. for 192 miles under a $3.60 rate to Butte or $5.10 to Helena, receives $1.35 per ton, and under the $3.50 and $5.00 rates, receives $1.25 per ton. The O. S. L. for 389 miles, receives in either case $2.25 per ton. **While the Northern Pacific for 95 miles receives $1.50 per ton in either case.**

With this condition, it is not surprising that defendant Northern Pacific, had no witnesses, and that the O. S. L. had no knowledge whatever of the service for the comparatively short haul, Silver Bow to Helena.

It is interesting to note in this connection that the Northern Pacific throughout Montana would and does transport coal a distance of 100 miles for $1.00 per ton; and that the Great Northern for a distance of 73 miles in Montana (their distance Butte to Helena) receives but 90c per ton.

INTERSTATE COMMERCE COMMISSION.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in behalf of FRANK W. CAMPBELL,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY CO.,

Defendants.

The petition of the above named complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative Board, created by statute, and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interstate Commerce Commission in any case where the Federal Act to Regulate Commerce has been, or appears to have been violated. That Frank W. Campbell, the complainant in fact, is a rancher now residing at or in the vicinity of Shawmut, Montana.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between station in the state of North Dakota, and stations in the state of Montana, and as such common carriers, are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That complainant in fact, upon being informed by the agent of defendant, Northern Pacific Railway Company, at Edmunds, N. D., that the rate on a carload of emigrants' movables from Edmunds, N. D., to Shawmut, Montana, "would not exceed $48.00," ordered and thereafter loaded a car with emigrants' movables and stock, viz., C. M. & St. P. car No. 53090, live stock contract for which was issued by agent of the defendant, Northern Pacific Railway Co., at Edmunds, as of March 21st, 1911, which contract provided for the movement of said car to Shawmut, Montana.

IV.

That the car in question was handled from Edmunds, N. D., to Miles City, Mont., by the Northern Pacific Railway, where it was turned over to the Chicago, Milwaukee & Puget Sound Railway, and by that company moved thence to destination, Shawmut.

V.

That upon arrival at destination, the complainant in fact, was obliged to pay charges based on the full combination of local rates through Miles City, Montana, viz., 29c per cwt. Edmunds to Miles City, and 36½c per cwt. Miles City to Shawmut, which rates are conceded to be correct in accordance with the published tariffs, and on this shipment amounted to $58.00 and $73.00 respectively, total charges $131.00.

VI.

That the rate of $48.00 as quoted in Paragraph III hereof, is erroneous. That the lowest rate on a consignment of this kind, from point of origin, Edmunds, to destination, Shawmut, is made up of the combination of rates through Edgeley, N. D., viz., 15c per cwt. (I. C. C. 4690) Edmunds to Edgeley via Northern Pacific, and 36.5c per cwt. (C. M. & St. P., I. C. C. B-1144) Edgeley to Shawmut, via Chicago, Milwaukee & St. Paul Ry. to Mobridge, S. D., thence Chicago, Milwaukee & Puget Sound Ry. to Shawmut, minimum weight 20,000 pounds, which would make the through charges $103.00; the car in question not having weighed to exceed the above minimum.

VII.

That the combination of rates via Miles City, as shown in Paragraph V hereof, namely, 29 plus 36.5c per cwt., through 65.5c per cwt., is unreasonable, and, therefore, in violation of the Act to Regulate Commerce, in that it exceeds the combination via Edgeley, as shown in Paragraph VI hereof, namely, 15 plus 36.5c through 51.5c per cwt., notwithstanding that the distance via the latter route is 145 miles greater between the point of origin and destination of this shipment.

WHEREFORE, your complainant prays that the defendants may be severally required to answer charges herein set forth; that after due hearing and investigation, an order may be made commanding said defendants and each of them, to cease and desist from the aforesaid violation of the Act to Regulate Commerce, and put in force, to apply as maximum in future to

the transportation of emigrant movables and stock, between the shipping and destination points named in Paragraph III hereof, in lieu of the rates named in said paragraph, such other rates as the Commission may deem reasonable and just, and also pay to complainant by way of reparation for the unlawful charges hereinbefore described, the sum of $28.00, or such other sum as in view of the evidence to be adduced herein, the Commission may consider complainant entitled to, and that such other and further order or orders be made as the Commission may consider proper in the premises and complainant's cause may appear to require.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in Behalf of FRANK W. CAMPBELL,

By R. F. McLAREN, Secretary.

Dated at Helena, Mont., February 27th, 1912.

I. C. C. Docket No. 4733.

Heard by Examiner Pugh, Sept. 27th, 1912.

INTERSTATE COMMERCE COMMISSION.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in Behalf of ADOLPH ZIMMERMAN,

Complainant,

vs.

GREAT NORTHERN RAILWAY COMPANY, OREGON SHORT LINE RAILROAD COMPANY, and SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY,

Defendants.

The petition of the above complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative board created by statute, and is empowered by Section 4375 of the Revised Codes of the State of Montana, to appear before the Interstate Commerce Commission in any case where the federal act to regulate commerce has been or appears to have been violated. That Adolph Zimmerman, the complainant in fact, is assistant superintendent of the American Smelting & Reining Company, and resides in the city of Helena, Montana.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment wholly by railroad between points in the State of Montana, and points in the State of California, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February, 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That complainant in fact, on February 10, 1912, purchased from defendant, Great Northern Railway Company's agent at Helena, Montana, two tickets to Los Angeles, California, and paid therefor $43.05 each, for which he holds the carrier's receipt, said rate being contained in Montana Joint Passenger Tariff No. 42, I. C. C. No. 29. That there was contemporaneously in effect, a rate of $38.05 from Butte, Montana, to Los Angeles, California, via the lines of the defendants, Ore-

gon Short Line Railroad, and San Pedro, Los Angeles & Salt Lake Railroad, also carried in the tariff referred to above, and that the local rate from Helena to Butte as named in Great Northern I. C. C. No. E-2557, was at that time and still is $2.20. That the through rate from Helena, Montana, to Los Angeles, California, of $43.05 as above, exceeded the rate from Butte, Montana, to same destination, plus the local fare, Helena to Butte, in the sum of $2.80, making an overcharge on the two tickets purchased of $5.60, which the complainant in fact seeks to recover, alleging that the rate of fare paid as herein set forth, is unreasonable and discriminatory, and therefore in violation of the Act to Regulate Commerce, in that it exceeded the combination of rates then in effect, and on file with the Interstate Commerce Commission.

WHEREFORE the petitioner prays that the defendants may be required to answer to the charges herein, and that after due hearing and investigation (defendants having ceased, effective May 1st, 1912, from the aforesaid violation of the Act to Regulate Commerce), an order be made commanding the defendants to make reparation in the sum of $5.60, for an unreasonable rate of fare paid as hereinbefore set forth, and make such other and further order as the Commission may deem necessary in the premises.

THE BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in Behalf of ADOLPH ZIMMERMAN,

By R. F. McLAREN, Secretary.

Dated at Helena, Mont., August 30, 1912.

I. C. C. Docket No. 5136; not heard.

In its answer the defendant, Great Northern Railway Company, admits the allegations, and expresses a willingsness to make refund of the alleged overcharge in the event that the Commission determines it right and proper to do so.

INTERSTATE COMMERCE COMMISSION.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in Behalf of L. H. VANDYCK CO.,

Complainant,

vs.

NORTHERN PACIFIC RAILWAY COMPANY, CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY,

Defendants.

The petition of the above named complainant respectfully shows:

I.

That the Railroad Commission of Montana is an administrative Board created by statute, and is empowered by Section 4375 of the Revised Codes of the State of Montana to appear before the Interstate Commerce Commission in any case where the Federal Act to Regulate Commerce has been, or appears to have been violated. That the complainant in fact, L. H. VanDyck Co., is engaged in the cattle and meat business at Gardiner, Montana.

II.

That the defendants above named are common carriers engaged in the transportation of passengers and property by railroad between stations in the states of Iowa, Nebraska, Missouri and Kansas, and stations in the State of Montana, and as such common carriers, are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

III.

That the defendants have in force and effect as per Trans-Continental Freight Bureau Local, Joint, Import and Proportional Tariff No. 14-A, R. H. Countiss (Agent) I. C. C. No. 949, a rate of 50 cents per 100 pounds, on corn in carloads, from Missouri River Common Points, as described in said tariff, to Gardiner, Montana.

IV.

Petitioner alleges that said rate of 50 cents per 100 pounds is unreasonable, unjust and discriminatory, in violation of the

Act to Regulate Commerce, and acts amendatory thereof or supplementary thereto.

WHEREFORE, complainant prays that defendants may be severally required to answer the charges herein, and that after due hearing and investigation an order be made commanding said defendants to cease and desist from the aforesaid violation of said Act to Regulate Commerce, and establish and put in force and apply as maxima in future to the transportation of corn in carloads between the shipping and destination points named in Paragraph 3 hereof, in lieu of the rates named in said paragraph, such other rates as the Commission may deem just and reasonable, and that such other and further order or orders be made as the Commission may deem necessary in the premises, and complainant's cause may appear to require.

THE BOARD OF RAILROAD COMMISSIONEDS OF THE STATE OF MONTANA, in Behalf of L. H. VANDYCK CO.

By R. F. McLAREN, Secretary.

Dated at Helena, Montana, Sept. 17th, 1912.

I. C. C. Docket No. 5272; not heard.

BEFORE THE INTERSTATE COMMERCE COMMISSION.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA, in Behalf of S. C. RING, of HELENA, MONTANA,

Complainant,

vs.

CHICAGO, BURLINGTON & QUINCY RAILROAD COMPANY, and the NORTHERN PACIFIC RAILWAY COMPANY,

Defendants.

The petition of the above named complainant respectfully shows:

I.

That it is a State Board duly and regularly created by law to carry out the provisions of the "Railroad Commission Act," Section 4363 to 4399 of the Revised Codes of Montana.

II.

That Section 4375 of the Revised Codes of Montana, makes it the duty of your complainant to appear before your honorable Board in behalf of the people of the State of Montana, where it appears that the Interstate Commerce Act is violated.

III.

That the defendants above named, are common carriers engaged in the transportation of passengers and property by continuous carriage or shipment, wholly by railroad between points in the State of Nebraska, and points in the State of Montana, and as such common carriers are subject to the provisions of the Act to Regulate Commerce, approved February 4, 1887, and acts amendatory thereof or supplementary thereto.

IV.

That the defendant, the Chicago, Burlington & Quincy Railroad Company, accepted for shipment from the Lincoln Upholstering Company of Lincoln, Nebraska, to S. C. Ring, of Helena, Montana, two rocking chairs which were way-billed by the defendant, C. B. & Q. R. R., through to Helena, in connection with the Northern Pacific Railway, at total weight of 190 pounds, rate $4.50 per cwt., total charges collected $8.55, December 19, 1910, Way-bill 17377, Car No. 104001, transferred

to Car No. 35167; Expense bill being Northern Pacific Helena Freight Bill No. 2144 of December 27, 1910.

V.

That shipping bill for said chairs read "Two rockers, burlapped, with runners detached," and way-bill read likewise.

VI.

That the notation on shipping bill was in error and should have read "Two rockers, bases detached."

VII.

That owing to the technical distinction between the words, "Runners," and "Bases," the defendant assessed and collected double first class rates, whereas the rockers actually had bases detached insofar as they reasonably could be detached without damaging the articles.

VIII.

That page 75 of the Western Classification, I. C. C. No. 8, provides:

"4. Chairs, rocking:

5. Bases detached, taken apart, and tied to backs, or backs and seats detached, packed flat on bases 1st

7. K. D. flat, rockers detached, in bundles or crates ..... 2nd"

IX.

That the only lawful and reasonable classification to have applied on the said consignment was Item No. 5 enumerated above, viz., 1st class, which would make the proper charges from Lincoln to Helena $2.25 per cwt., instead of $4.50 per cwt.

X.

That by reason of the facts stated in the foregoing paragraphs, complainant has been subjected to the payment of rates of transportation which were when exacted, and still are, unjust and unreasonable in violation of the Act to Regulate Commerce, and particularly Section 1 thereof.

WHEREFORE, complainant prays that defendants may be severally required to answer the charges herein; that after due hearing and investigation, an order be made commanding said defendants and each of them to cease and desist from the aforesaid violation of said Act to Regulate Commerce, and establish and put in force and apply as maxima in future to

the transportation of rocking chairs between the shipping and destination points named in Paragraph III hereof, in lieu of the rates named in said paragraph, such other rates as the Commission may deem reasonable and just, and also pay to complainant, S. C. Ring, by way of reparation for the unlawful charges hereinbefore described, the sum of $4.27, or such other sum as, in view of the evidence to be adduced herein, the Commission may consider complainant entitled to, and that such other and further order or orders be made as the Commission may consider proper in the premises and complainant's cause may appear to require.

BOARD OF RAILROAD COMMISSIONERS OF THE STATE OF MONTANA.

By R. F. McLAREN, Secretary.

Dated at Helena, Montana, June 16th, 1911.

I. C. C. Docket No. 4190.

Heard by Examiner Vassault, February 23, 1912.

JOINT RATES, DIVISION OF.

Section 13, Chapter 37, Laws of 1907 (Montana Railroad Commission Law), gives this Board " * * * the power, and it shall be its duty to fix and establish for all or any connecting lines of railroad in this state, reasonable joint rates of freight charges for the various classes of freight and cars that may pass over two or more lines of such railroads. * * *"

No provision, however, is made giving the Commission authority to determine what proportion of such joint rates shall be paid to each participating carrier, and legislation is hereby recommended that an amendment be made to the law giving the Board jurisdiction to apportion joint rates as between the railroad companies parties thereto, in the event that the carriers themselves cannot arrive at a satisfactory basis of settlement.

PART III.

TRAIN ACCIDENTS AND PERSONAL INJURIES.

During the past year the Commission has been notified of and has investigated, either on the ground at the scene of the accident, when practicable to do so, or from testimony of witnesses, depending upon the nature of the casualty, the following train accidents involving loss of life or personal injury to the extent that the services of a physician were required, in accordance with Section 16 A, Chapter 37, Laws of 1907:

OCTOBER 1st, 1911, TO SEPTEMBER 30th, 1912.

ROAD.	Employes		Other Than Employes.	
	Killed.	Injured.	Killed.	Injured.
Northern Pacific Ry.	15	210	18	61
Great Northery Ry.	13	176	12	31
Chicago, Milwaukee & Puget Sound Ry.	11	64	8	8
Butte, Anaconda & Pacific Ry.	2	28	2	5
Oregon Short Line Railroad.....	..	1	3	..
Chi. Bur. & Quincy Railroad	3	6	2	4
Montana Western Ry.	..	..	1	1
Mont. Wyo. & Southern Railroad	..	..	..	..
Gilmore & Pittsburgh Railroad	..	..	..	..
White Sulphur Springs & Yellowstone Park Ry.	..	..	..	..
TOTAL	44	485	46	110

A brief review of the more important accidents follows.

Northern Pacific Railway, Montana Division.

East-bound passenger train second section No. 174 collided with Work Extra No. 41, two and one-half miles west of Pipestone, at 2:20 P. M., November 16th, 1911, instantly killing the conductor of the work train, and five other employes; total fatalities, six; also injuring 11 employes, making a total of 17 killed and injured.

Number 174 is due at Spire Rock at 11:55 A. M., and at Pipestone 12:09 P. M. This second section was running two hours and 15 minutes late on the schedule, which would make its time at Spire Rock 2:10 P. M., and at Pipestone 2:24 P. M. The distance between Spire Rock and Pipestone is 4.9 miles. The collision occurred as stated above, at 2:20 P. M., showing conclusively that the work extra was occupying the main line on the time of a first class train. Work Extra No. 41 had the order giving it two hours and 15 minutes on second No. 174. It also had an order to "Protect against" two helper engines east-bound, after 11:00 A. M.

The work train conductor left a flagman at a point about one mile west of where the accident occurred. This flagman states that he was instructed by the conductor to hold the two helper engines, but was not instructed to hold second No. 174, and upon the arrival of this latter train, the flagman

climbed into the cab, and in reply to the engineer's inquiry as to what he was doing there, stated that he was to hold the "Helpers." The engineer asked him specifically if he was being held; the flagman answered, no.

The work extra was doing some switching at Pipestone, and at 2:10 P. M. the conductor asked for more time on second No. 174, which he did not receive. When he came out of the telegraph office, he signalled to the engineer to come ahead. The engineer then asked the conductor if he got any more time on second No. 174, and the conductor answered, "No, come ahead, I've got a flag up there." It is apparent from the record that the conductor did not overlook second No. 174, and it is also very evident that he was under the impression that he had instructed his flagman to hold that train, because the work extra left Pipestone, west-bound, just about the same time that second No. 174 was due to leave Spire Rock. This conductor was killed in the collision, but it is plain that his object in making the move was to release the passenger train and pick up his flagman.

The collision occurred in a deep cut on about a 12 degree curve. Neither train could see the other until within a few car lengths. The men who were killed were riding in the caboose, which was on the west end of the train, the engine being on the east end, and pushing the cars ahead of it. This accident, without doubt, was the result of a misunderstanding of instructions between the conductor and his flagman.

This Commission has regularly recommended additional safety in the movement of trains. We realize that work trains must be given as much latitude as possible in order that they may accomplish their work. It would not be practicable to require a work train to "Keep clear" of all regular and irregular trains, and under the system of operation, a work train is permitted to occupy the main line until the arrival of second and inferior class trains (freight trains) under the protection of a flag. Work trains must, however, "Clear" the time of first class trains (passenger trains) according to Transportation Rules. We realize that a second or inferior class train might have collided with this work extra under a similar misunderstanding of instructions, but it is not likely that the question would have arisen in the mind of either the conductor or flagman, had the train being held been other than first class. The

fact of its being a first class train, suggested to the flag man that the conductor would look out for it, and respect its time in accordance with the rules.

It is stated above that a work train is not authorized to occupy the main line on the time of a first class train, without specific orders, which means that the work train must be into clear, and had a rule been in effect on November 16th, requiring the work train to report clear of the main line before the passenger train was permitted to enter the block, this accident would not have happened. We cannot hope to eliminate entirely collisions between trains moving in opposite directions on single track, but we believe that a recurrence such as this would be avoided if the rule were established requiring work trains to report into clear of the time of first class trains, before the latter were permitted to proceed. The Commission expects that this recommendation will be looked upon as an innovation in the matter of train movement, but if we are to recommend for additional safety, it is very evident that innovations are in order at this time. We do not see wherein such a rule would interfere materially with the duties of work trains, and the worst that it could do to the passenger train would be to delay it, perhaps a few minutes, at the block station and this certainly would be much more preferable than a repetition of this disastrous wreck.

It should also be made mandatory upon work train conductors to give instructions to flagmen **in writing,** retaining a copy thereof in a carbon sheet book, **pocket size,** which the conductor must carry with him at all times, and not depend upor his memory. This is the practice on some roads now, and the Commission recommends that it be adopted by all lines. There is no question but that many accidents of this nature would have been averted if flagmen had their orders in writing.

Northern Pacific Railway, Montana Division.

East-bound passenger train No. 6 was derailed just east of the east switch at Brewer, November 9th, 1911, killing the engineer, and injuring two passengers and one employe, total killed and injured, four.

This derailment happened at 3:24 A. M. It was snowing at the time, and rocks had rolled down off the bluff onto the track. The train was running not to exceed 35 miles per hour, but the white blanket of new snow which covered everything, prevented the engineer from discovering the obstruction in time to avoid the accident.

Great Northern Railway—Kalispell Division.

Engine Extra 1307 collided head-on with east-bound passenger train No. 4 at about 8:25 A. M., November 17th, 1911, two and one-half miles west of Eureka, Montana, injuring fourteen passengers and three other persons, including employes; damage to railway company's property estimated at $1,800.00.

Engine No. 1307 "helped" Extra 1315 East from Rexford to Stryker; left Rexford at 12:45 A. M., arrived at Stryker at about 6 A. M. Helper Engine 1307 was cut off at Stryker and received orders at 6:20 A. M. to "Run extra Stryker to Rexford, take siding and meet Extra 1309 East at Fortune." Extra 1309 was met at Fortune as per this order.

Train No. 4 was right on time. When Engine 1307 arrived at Eureka, the order board was out. A clearance only was given to this engine, and the railway company's physician got on. The engineer looked at his watch and told the doctor that he had time to "make" Rexford for No. 4, as it was then 7:17 A. M. No. 4 was due at Eureka at 8:24 A. M. and at Rexford at 7:57 A. M. When the engineer looked at his watch at Eureka, it was, as a matter of fact, 8:17 instead of 7:17, that is, he misread his watch one hour, and had proceeded only two and one-half miles west of Eureka when he met No. 4 on the main line with the above results. This engineer had been on duty nine hours and fifty minutes, and had ten consecutive hours rest before going on this trip. He had been in the employ of the Great Northern Railway as engineer for many years, and was considered a most reliable and competent employe. The mistake he made does not necessarily indicate carelessness, but is one that could very easily happen, and has happened with the best of engineers. Fortunately, this collision was not attended by more serious results; there were no fatalities, and the injuries sustained by passengers and others were comparatively slight.

Under the system of operation, this engine extra had a right to go to Rexford for No. 4, if it could clear No. 4's time at that station five minues. It was all up to the engineer. There was nothing at Eureka to hold him, or warn him of the danger. When he left Eureka, No. 4 had left Rexford, and the possibility of an engineer misreading his watch in the face of an opposing passenger train, is a serious condition. This meagre protection does not afford by any means, to the trav-

eling public and to railway employes, the maximum of protection, and just so long as the present system of operating trains is continued, accidents of this kind will happen. It can be avoided by block system. Had this been in use on November 17th, Engine 1307 would have been held at Eureka until No. 4 had arrived. In other words, the block between Eureka and Rexford was already occupied, and it would not have been possible for another train to have entered the block until No. 4 had cleared it at the next block station. There is, however, no protection of this kind afforded between the points mentioned.

Great Northern Railway—Kalispell Division.

A most peculiar accident occurred at 5:20 P. M. January 9th, 1912, one mile east of Java, on the main line of the Great Northern Railway in Flathead County, on the west slope of the Continental Divide.

Extra No. 1312 East, with rotary snow-plow outfit, was engaged in bucking snow, and at the time of the accident was moving at a speed of about 10 miles per hour. A snowslide struck the rotary plow broadside, hurling it from the track and down the steep declivity for a distance of about 150 feet, where it rested momentarily, when a second slide carried it 200 feet farther into the bed of Summit creek. The locomotive and caboose were not struck by the slide and remained on the rails. It is reported that at the time of the accident the thermometer registered 26 degreee below zero.

The snowfall in the mountains this winter has been the heaviest in many years, and the forest fires of two years ago cleared, to a large extent, the timber on the slopes, thus removing much obstruction which in years past has prevented the snow from sliding any great distance. This is given as the reason why there have been so many slides during the winter of 1911-12. It is reported that at one time 22 slides occurred within a distance of 19 miles.

This accident caused the death of two employes, and injury to five others. The division superintendent, division road-master and traveling engineer were in the rotary at the time the slide struck it. The engineer of the rotary plow and the traveling engineer were dead when taken out of the wreck. Fortunately, the five employes were not seriously, although painfully, injured. The greatest suffering resulted from freezing.

Our investigation did not disclose any responsibility on the part of the railway company, and, so far as known, there has never in the past been a slide at the place where this occurred.

Northern Pacific Railway—Rocky Mountain Division.

West-bound passenger train No. 197 collided with Work Extra No. 1210, one-quarter mile west of Clinton, Montana, at 9:50 P. M., April 18th, 1912, causing injury to eight passengers and one trainman, none of the injuries being serious.

Clinton is a station on the main line of the Northern Pacific, located between Garrison and Missoula on double track. On the night in question, a small slide occurred on the west-bound track west of Clinton, and the work train was sent to clear it up, having orders to work from 7:30 P. M. to 11:30 P. M. between Clinton and Bonner, with right over all trains. The order to train No. 197 was put out at Clinton, restricting its rights to the use of the west-bound track between the points indicated. The operator at Clinton, however, failed to deliver this order to the passenger train, and the latter had proceeded only about one-quarter of a mile west when it collided with the work train moving eastward, after having cleared the slide from the main line.

The track between Garrison and Missoula is equipped with automatic electric block signals, but owing to curvature train No. 197 could not see the first block signal west of Clinton, and not having received the order respecting the work train, was, of course, within its rights.

It will be noted that the order restricting the rights of train No. 197 was put out at the point where such rights were restricted, and it would seem that had the order been put out at Drummond, the first open telegraph station east of Clinton, that the accident would have been avoided. Rule 201, N. P., permits the placing of restricting orders as in this case in block signal territory, in the following language:

> "A form '19' train order restricting the superiority of a train, must not be sent to a train at the point where such superiority is restricted, except in automatic block signal territory, and then the train must be brought to a stop before delivery of the order."

It is true that had the operator at Clinton delivered the order, the accident would not have occurred, but with a view to additional protection, the Commission is of the opinion that the order should have been put out at Drummond, and also at the point (Clinton) where the rights of the superior train were restricted. This not having been done, it all depended upon one

man to do his duty, whereas had the order been placed at two stations instead of one, it would be safe to say that the collision would not have happened.

Great Northern Railway—Kalispell Division.

Extra No. 1842 West and Extra No. 1843 East collided head-on about one mile east of Rockhill, Montana, on the main line of the Great Northern Railway, at 8:30 A. M., June 19th, 1912, injuring five train and engine men, none fatally, and destroying property of the railway company amounting to $13,271.

Extra No. 1842 West received an order at Essex, directing it to meet Extra No. 1843 East at Rockhill. This same order was put out to Extra No. 1843 East at Nyack, the latter station being five miles east of the meeting point, Rockhill, therefore making it a lap order. Extra No. 1842 West passed Nyack and was within a mile of the east switch at Rockhill when it met the east-bound train on the main line with the above results.

The dispatcher responsible for this accident had been in the employ of the Great Northern Railway Co. but twelve days and had nine years previous experience dispatching trains on other roads. He had been on duty seven hours at the time this order was put out and had sixteen hours' previous rest. It is evident that he became confused as to the location of the stations and was under the impression that Nyack was west of, instead of east of, Rockhill. The operator at Nyack should have discovered the error when the order was put out at that station, but it seems that this operator mechanically copied the order from the dispatcher and paid little or no attention to its contents.

There is no block system in use on that portion of the main line, but had there been, this accident would not have happened, notwithstanding that one of the trains, through the dispatcher's mistake, was not aware of the meet at Rockhill.

Great Northern Railway—Montana Division.

Extra 1530 West collided head-on with Extra 1534 East about one mile east of Calais, at 11:33 A. M. October 21st, 1912, resulting in the death of one employe and injury to six others, and destruction of railway company's property to the extent of $7,296.50.

Extra 1530 West was given running orders at Williston, at 5:18 A. M. to "Run extra Williston to Glasgow." Extra 1534 East was created at Brockton at 11:10 A. M. and given orders to "Run extra Brockton to Williston," no provision being made for meeting point with Extra 1530 West. It will be noted that the collision occurred just 23 minutes after Extra 1534 had left Brockton. The dispatcher's office is located at Glasgow, and handles the division between that terminal and Williston, and in issuing orders to Extra 1534 East, the trick dispatcher admits that he entirely overlooked Extra 1530 West, hence the collision.

This is another case where block system would have prevented the accident. Notwithstanding that neither of these trains was aware of the other's existence, the block could not have been entered until the extra west had cleared at Brockton.

Great Northern Railway—Butte Division.

Two employes were killed and two injured at 8:00 A. M. September 29th, 1912, at Tunnel No. 7, on the line of the Great Northern Railway near Basin, Montana.

This tunnel, a timbered structure, was in course of being lined with concrete, and at a point about 70 feet from the west portal some of the timbering had been removed preparatory to concreting. A work train had entered the tunnel from the east end, and had proceeded to the point where the timbers had been removed, when a large boulder and several tons of rock and dirt fell from the roof, striking the caboose of the work train with the above results.

The large boulder referred to was visible at the time the timbers were removed, but appeared to be perfectly solid; in fact, our investigation developed that the contractors had tested the roof of the tunnel for some distance on each side, but none of the projecting rocks could be dislodged. Presumably the vibration caused by the train passing through the tunnel started small particles of the formation to fall, and this loosened the roof to the extent that the immense weight of the huge boulder caused it to fall, followed by many tons of rock and dirt.

Great Northern Railway—Kalispell Division.

Mail train No. 27, west-bound, was derailed at east passing track switch at Tobacco, Mont., at 2:12 P. M., Oct. 27th, 1912, resulting in injury to three employes and destruction of railway company's property estimated at $2,200.00.

This train carries the mail, but no passengers. Its average speed per hour over the district from Whitefish to Troy is 39.36 miles, and on the date in question was about 13 hours and 30 minutes late, and exceeding its schedule running time. The main line at Tobacco was undergoing repairs, and the passing track was being used as a temporary main line. The train and engine crew on train No. 27 had the order notifying them of this arrangement, but the speed approaching Tobacco was not sufficiently reduced. Train No. 27 passed caution signals at a speed of from 40 to 50 miles per hour, ran by the danger signal at about 30 miles per hour, and struck the east passing track switch so fast that the engine turned over on its side and derailed the two following cars.

It is clearly evident that this derailment was caused by excessive speed, notwithstanding that cautionary orders had been given the engineer, which were disregarded, and in connection with this accident we desire to call attention to the Commission's report on "Safety in the Operation of Trains," recommending legislation

> "Requiring all trains to come to a full stop before taking siding or pulling through cross-over to other main or yard tracks. Serious accidents have resulted from fast trains taking cross-overs or entering switches at a high rate of speed. In all cases, the speed at such time is limited by bulletin or time card instructions, but the greatest trouble appears to be the inability of enginemen to properly judge speed. Some investigations have shown that trains have been derailed at cross-overs running at a speed of from 25 to 35 miles per hour, while the instructions called for not more than 15, and the seeming inability of enginemen to judge how fast they are running prompts the suggestion to require all trains to come to a full stop. In this way there can be no question about it, and accidents of this nature will be avoided."

Great Northern Railway—Kalispell Division.

Mail train No. 28 east-bound collided with the rear of Extra 1321 East, about one mile east of Stonehill in Lincoln County, at 11:25 P. M., October 14th, 1912, resulting in injury to three trainmen and destruction to railway company's property to the extent of $2,438.00.

Train No. 28 had orders to run two hours and 45 minutes late, and the conductor and engineer of the extra, in figuring where they would let No. 28 pass, both made the same mistake in misreading their watches one hour, consequently the extra was on the time of the first class train without protection. There is no block system on that portion of the Great Northern Railway, but it is entirely likely that had the block systsem been in operation the accident would have been avoided, as No. 28, notwithstanding that it is a first class train, would not have been permitted to enter the block in the rear of this freight train until the latter was clear of the block station in advance.

Great Northern Railway—Kalispell Division.

Extra 1320 East and Extra 1137 West collided head-on between switches at Lupfer, Montana, at 11:26 A. M. Sept. 13th, 1912, injuring three train and enginemen and causing damage to railway company's property estimated at $3,167.00.

Extra 1137 West was a stock train having right over all extras east, and on its schedule order was due to leave Lupfer at 11:30 A. M. The engineer on Extra 1320 East misread his watch one hour, and figured when he passed the west switch at Lupfer that he had time to go to Vista, the next station beyond, for Stock Extra 1137. As a matter of fact, the stock train was due at Lupfer in four minutes, and the two trains met between switches with the above results. A moment before the collision happened, the conductor of Extra 1320, who was in the caboose, observing that the train had passed the west switch, pulled the emergency valve, but too late to avoid the accident.

There is no block system in use on the line of the Great Northern Railway where this accident took place, and as the Commission has repeatedly stated in connection with casualties of this nature, the operation of block system would have prevented the two trains in the same block, even though the engineer should misread his watch.

Chicago, Milwaukee & Puget Sound Ry.—Musselshell Division.

Extra 2108 East was derailed between switches at Thebes, Montana, at 8:10 P. M. Sept. 21st, 1912. A bridge and building crew occupied bunk cars standing on a spur track parallel with the main line directly opposite the point of derailment. The first 17 cars back of the engine were derailed, and collided with the bunk cars occupied by the bridge crew, killing two and injuring seven of the occupants.

The investigation would indicate that the engine tank left the track first. The speed at the time was approximately 20 miles per hour. Six cars back of the engine was a load of heavy timbers on three flat cars, the load being carried by two cars with an idler in between, and when the shock came this idler, not carrying any of the weight, shot out to one side, and it was this car that came in contact with the bridge outfit with the above results.

Investigation did not develop any cause to which the derailment could be attributed. The track at this point is straight and on a slightly descending grade. No defects in either track or equipment were discovered.

Great Northern Railway—Kalispell Division.

Extra 1319 West collided with rear end of Extra 1312 West, three-quarters of a mile east of Kootenai Falls, Mont., at 6:10 P. M. Aug. 6th, 1912, injuring three train and enginemen, none fatally.

Extra 1321 broke in two and flagman failed to go out the required distance with stop signals. The engineer on Engine 1319 did not notice the flagman in time to bring his train to a stop before striking the train ahead.

As we have many times heretofore stated, the Commission knows of only one way that will effectually prevent accidents of this kind, and that is to operate trains in a positive block; but just so long as protection depends entirely upon a flagman doing his duty, and the engineer's observance of danger signals, oftentimes imperfectly displayed, accidents of this nature will continue.

Butte, Anaconda & Pacific Railway.

Extra 22 East was derailed at 4:50 P. M. Sept. 1st, 1912, one and one-half miles east of Durant, resulting in the death of the engineer and injury to six other employes, as well as three members of the Anaconda Fire Department.

The train consisted of Engine No. 22 and a caboose. There was a bad fire raging at the time in the city of Butte, and this special train was bringing to the scene members of the Anaconda Fire Department and some fire fighting equipment. The derailment occurred on a 10 degree curve, causing the engine and caboose to turn over and roll down the embankment. The cause was apparently due to high speed on a curve of this degree. The distance from Anaconda to Durant is 12 miles, and the wrecked train made the distance in 16 minutes, which would indicate only about 45 miles an hour. However, from Cliff Junction to Durant the run was made in one minute. The distance is one mile, and although the train crew stated that the engineer (who was killed) applied his air before reaching the curve, thereby reducing the speed of the train to approximately 40 miles an hour, it is entirely likely that the speed was much greater than this.

A careful examination of this engine and caboose, as well as the track at the point of derailment, did not disclose any defects or irregularities that might be responsible for the accident. The front tank truck was the first to leave the rails, and these wheels were found to be in perfect condition.

Great Northern Railway—Montana Division.

Extra 1551 East, consisting of 42 carloads of fruit, was derailed at 1:25 P. M. Sept. 6th, 1912, two miles east of Macon, caused by broken flange on Erie Car No. 107626, which was the thirteenth car from the engine, and derailed the ten following cars. Two trespassers were killed and two seriously injured. All four of these men were beating their way and their presence on the train was not known to any member of the crew. It is assumed that they boarded the train while ascending Kintyre hill at a slow rate of speed.

At a point about a thousand feet west of the place where the first car left the rails, the broken piece of flange about 10 inches long was picked up. This fit perfectly into the wheel of the above numbered car, and shows conclusively that the train traveled only about a thousand feet after the flange broke. The wheel, No. 332233, was made by the G. W. Wheel Co., St. Paul, Minn. Cast 6-19-12.

Chicago, Burlington & Quincy Railroad—Sheridan Division.

Extra 3107 West collided with the rear end of Extra 3135 West at 10:27 A. M. November 6th, 1912, two and one-half miles west of Parkman, Wyo., and just inside of the Montana state line. Two employes were injured, not seriously, and equipment estimated at $4,921.00, damaged and destroyed.

Extra 3135 left Parkman at 10:00 A. M. Extra 3107 left Parkman 10:11 A. M. The first extra named stopped on account of a bursted air hose breaking the train in two. Flagman went back 3200 feet to protect the rear end, and was seen by the engineer of Extra 3107 for a distance of about 4200 feet from the point where the collision occurred.

Parkman is at the top of a hill. The grade west-bound is 1.25 per cent descending. The engineer on Extra 3107 had made a service application of the air, and had just released when he observed this flagman giving a stop signal. A curve obstructed the view ahead, and not knowing what the trouble was, he threw his brake valve into the emergency position, but having just released, this did not have much effect in reducing the speed of the train. An examination and air test were made later, and it was found that of the 23 cars in the train 20 were in good working condition, one car having 9 inch piston travel, and under ordinary conditions the air brakes were sufficient to hold the train on this grade.

It will be noted that the second extra left Parkman 11 minutes behind the first one. In other portions of this report, the Commission has expressed its views on blocking trains, and had Extra 3107 been blocked at Parkman until Extra 3135 had passed into the next block beyond, this accident would not have happened.

Oregon Short Line Railroad—Montana Division.

Two enginemen were killed and four passengers injured when east-bound passenger train No. 4 collided with two runaway cars loaded with coal, about 12 miles west of Lima, Montana, at about 4:32 A. M. October 27th, 1912.

The Lima yeard is on a 1 per cent grade. Regular switch engine and crew were engaged in switching a train of coal in the west end of the yard, and had lined the derail for the main track so as to expedite their movements. The derail is located about sixty feet west of the west lead switch. Switching can be done more expeditiously from the main line than from the derail track on account of lighter grade. Switching crew took two loaded cars off track No. 2 and placed them on track No. 4. One of the crew rode these two cars in and set the hand brake on the first car, using his club. The engine returned to track No. 2, and while this move was being made the first two cars referred to drifted out of track No. 4 onto the main line, and were not missed for about 9 or 10 minutes. The derail being lined up for the main track, allowed these two cars to get away. There is no night telegraph office between Lima and the point where the accident occurred, consequently there was no opportunity to side-track or ditch the runaway cars, and they met No. 4 on the main line with the above result.

A very thorough investigation was made of this accident, and all the testimony indicates that the switchman who set the brake on these two cars used his club as was his custom, and it is possible that he he set it up to a breaking strain and that the chain or rod snapped, or the dog may have kicked out after he left these two cars and crossed over through the yard to catch the engine on track No. 2. There was no evidence to indicate that this employee had been careless in the performance of his duties. However, had the derail been set in the derail position, the accident would not have happened. The cars would simply have gone off the end of this track onto the ground.

A derailing switch is only effectual as such when it is set to catch any cars that may get away, and the moment the derail was thrown for the main line and left in this position unprotected there virtually was no derail, and to guard against accidents of this kind in the future, there is only one recommendation that we can make, and that to the employes them-

selves, that derailing switches must not be thrown except when it is absolutely necessary to do so, and then must be protected by a man in charge until returned to normal position. In all mountainous country derails are the only protection against cars getting away, and their efficiency depends wholly upon the employes' observance of the instructions governing safety appliances.

At Lima, the tail track of the derail is in a sag, and an engine cannot handle on this track as many cars as it can from the main line, consequently switching crews have gotten into the habit of using the main line as they did in this case. It is the Commission's recommendation that the track on the derail be raised, and the grade thereby reduced so that switching can be done therefrom as easily as from the main line, which would mean that the derail would not be thrown when crews were switching in the west end of the yard.

SAFETY IN THE OPERATION OF TRAINS.

In all of our previous Annual Reports, the Commission has cited the growing necessity for additional precautionary measures in the movement of trains, and has strongly advocated the use of the "positive block," but as yet there is no legislation on the subject in Montana. Head-end and rear-end collisions have continued throughout the period covered by this report, as shown by the preceding pages.

The Commission's attitude with respect to safety is shown in Commissioner Boyle's letter October 28th, 1912, to the Chairman of the Safety Appliance Committee, National Association of Railroad Commissioners, as follows:

> "Dear Sir—I beg to acknowledge receipt of your letter 19th inst., enclosing copy of report of the Safety Appliance Committee of the National Association of Railway Commissioners, of which I am a member, although I regret that I will be unable to attend the Convention.
>
> I think Mr. Jurgensen's report is very good, with the exception that I do not believe the employes in railroad service should be amenable to the state. For many reasons, in my opinion, this would have a depressing effect upon train and enginemen, who for the greater part are ambitious to comply with the rules and instructions of the railroad company, and in my thirty-five years of railroad experience, I have never found an instance where an employe wilfully contributed to train accidents. The oldest and most competent men in train and engine service will in time make a mistake, perhaps resulting in serious accident, and I cannot think that such men as these should be day after day performing their duties to the very best of their ability, with a penalty, possibly imprisonment, hanging over their heads. I agree with the report in that the great percent of train accidents is due to human fallibility, but in my opinion the time has not arrived when automatic train control should be made mandatory upon the railroads; such control is yet in its experimental stage, and in any event, the necessity therefor has not been established.
>
> What Mr. Jurgensen says with regard to automatic block signals is all true, and I am personally familiar with the 100 miles of single and 331 miles of double track railroad referred to. There is no question but the extension of the automatic electric block system to include all lines of railroad would be most desir-

able and productive of splendid results, but to do this would require a great deal of time and furthermore, many railroads are not in a position to assume so great an undertaking. There should, however, be **Block Sytem.** It makes little if any difference to the public what system of blocking is employed just so long as trains are not permitted to move under the ominous permissive system. It has been my conclusion for a number of years, that all trains should be handled in a **Positive Block,** eliminating entirely intermediate siding, thus requiring all trains to meet and pass at block stations, and I think the enactment of federal and state legislation prohibiting the movement of trains in other than positive block would be a step in the right direction, viewing the situation from a point of safety to the traveling public. Block system can be installed without any great expense, and the railroads could suit their own convenience as to where block stations should be located, whether one mile or twenty miles apart, depending upon physical and traffic conditions. The elimination of the intermediate siding between block stations is, in my opinion, a very necessary move in the interest of safe operation. At such intermediate siding or station, there is no signal man and no semaphores. In fact, nothing to prevent a train from running by, and it will continue to happen that trains moving at the same time from either end of the block to the intermediate siding will, from time to time, drift over the switch, or possibly forget the meet entirely, resulting in collision, thus completely defeat the object of blocking trains.

Block system is valuable only insofar as it is operated as such. The moment permissive movements are allowed, the block exists on paper only, and affords no protection. There is no additional safety over the present system of operation in what is known as "Caution Card Block," which simply means additional instructions to the employes to exercise greater care This method of train movement has demonstrated repeatedly that it is not safe, and I have been forced to the conclusion that the adoption of **positive block** is the only way in which these accidents can be minimized. As we all know, a positive block means but one train in the block, and until that train has been cleared and passed into the block in advance, no other train must be allowed to enter from the rear. If this is done, there can be no such thing as rear-end collisions, and with the elimination of intermediate sidings or passing tracks, there can be no head-end collisions. Thus, it

would appear to me, that "Collisions," which constitute 75.5 per cent of the preventable accidents, as shown in the report, would be practically rendered impossible.

Another thing on which I would recommend legislation is, requiring all trains to come to a full stop before taking siding, or pulling through cross-over to other main or yard tracks. Serious accidents have resulted from fast trains taking cross-overs or entering switches at a high rate of speed. In all cases, the speed at such times is limited by bulletin or time card instructions, but the great trouble appears to be the inability of enginemen to properly judge speed. Some investigations have shown that trains have been derailed at cross-over, running at a speed of from 25 to 35 miles per hour, while the instructions called for not more than 15, and the seeming inability of enginemen to judge how fast they are running, prompts my suggestion to require all trains to come to a full stop. In this way, there can be no question about it, and accidents of this nature will be avoided.

I have not written Mr. Connelly to add my signature to the report, for the reason, as given herein, that I am not prepared to recommend legislation making railroad employes amenable to the state.

Yours very truly,

D. BOYLE,
Commissioner."

PREVENTION OF RAILROAD ACCIDENTS.

Having for its object the prevention of avoidable accidents, a treatise on the subject has just been published by Mr. Geo. Bradshaw, which the author styles as "A Heart to Heart Talk with Employes." Mr. Bradshaw is a practical railroad man of many years' experience, and therefore speaks from personal observation and knowledge of the habits and practices of railroad employes in the various departments of the service. The work contains tabulated statements of railroad accidents in the United States for certain periods, so classified as to show the percentage of such accidents attributable to neglect or carelessness on the part of employes themselves (avoidable accidents), and appeals to the MEN to inaugurate a crusade against that class given to recklessness, carelessnes or indifference; responsible in a large measure for many on the appalling list of personal injuries and fatalities. It should not be understood that the employes are censured as a whole; on the contrary, the great majority are accredited with intelligence away above the average, the performance of whose duties is executed in a most commendable manner; exercising care, caution and consistency, while on the other hand this booklet directs its criticisms against the slipshod "Good enough" methods of the incompetent and indifferent "railroad man."

Importance is attached to the ever present opportunity, and the disposition of the "chance" element in railroad service to take that chance; which, when done once successfully, is an incentive to its repetition again and again until one day the time was just a little too short, the speed was greater or less than calculated, the distance improperly judged, or any one of a hundred things did not turn out just as it might have, and the result was merely another accident report with its attending list of casualties. Accidents of this nature are deplorable for the reason that they are inexcusable; they can be avoided, but the remedy lies not wholly in legislation, nor in a reissue of instructions by the officials of the railroad company, but with the men actually performing the work, and it is to such that the appeal is directed, not only for the protection of the public, their fellow employes and the property of the railroad company, but for their own personal welfare.

We cannot in this report go into the details of Mr. Bradshaw's work on this general subject, although we would like

to quote verbatim many of the situations so pertinently described and which every railroad man must admit have not been overdrawn, but actually exist and continue to exist today to a greater or less degree on every railroad that was ever built. But, as stated, we cannot attempt to take up the various and numerous conditions dealt with. It is our understanding, however, that this book is published by the Norman W. Henley Publishing Company, 132 Nassau Street, New York, and costs about fifty cents, probably lower prices would be made on quantities, and this Commission has no hesitation in recommending it to any railroad man, whether he be employed in a hazardous position or otherwise, as being well worth reading; interesting and instructive to all, and carries a moral lesson to the very class of railroad employes whose shortcomings make a publication of this kind a necessity.

TRAIN DESPATCHERS.

This important department in railroad operation is not being guarded as closely as it might, and the Commission recommends that despatchers be given privacy. Our observations have been that at many terminals the room occupied by the train despatchers is also used for other purposes; sometimes so located that it is necessary for other employes to pass back and forth, and most frequently there is no attempt made to keep the doors locked. We are pleased to say that this condition is not found at all points, but it is true that even on the same railroad, more importance is attached to this feature of safety on some divisions than on others. There would appear to be no good reason for this. If it is essential to afford the work of the despatcher protection on the right, it is equally essential on the left, and there can be no question, from the very nature of his work, that to divert the attention of the despatcher, introduces an element of danger.

Just as an illustration we would cite a head-end collision of recent occurrence, directly caused by the despatcher completely overlooking an opposing train and not providing for a meeting point. We say "directly caused," and the despatcher admits that he "forgot about the other train," but as a matter of fact, this despatcher was not working "Behind closed doors," but occupied a room with other employes, freely accessible to almost any one, and it is possible, even probable, that his surroundings were to some extent responsible.

There is no one class of railroad employes upon whom so much depends as the train despatcher. He holds in his hand the reins that guide the maze of traffic over his division, and to do so successfully, he must give his work absolute and undivided attention. This cannot be expected if the yardmaster and the car clerk, the stockman and the call boy, the switchman and the casual social visitor are permitted to sit on the corner of his table asking questions or otherwise carrying on a conversation while the "man at the helm" is trying to "fix out" some train with orders. And so we make the recommendation that all the railroads of Montana and all the different Divisions of the same railroad, make such arrangements as will give the despatchers seclusion, and thereby an opportunity to guardedly exercise the functions of his office, which mean so much to the general public.

PART IV.

NAVIGATION

NAVIGATION.

Chapter 105, Session laws 1911, provides, "* * * for the general superintendence and control of navigation by the State Board of Railroad Commissioners. * * *" On August 14th, 1912, the Whitefish Commercial Association of Whitefish, Montana, made informal complaint to the Commission, stating that a boom of logs, the property of the Somers Lumber Company, in Whitefish Laks, extended north from the mill several hundred feet into the lake, which was considered dangerous to boats at night, and requested that the owners of the logs be required to install an electric light or some other kind of a light on the boom so that they would have some protection entering the outlet from the lake proper.

Correspondence ensued with the Somers Lumber Company, who claimed that the boom in question did not in any way block the channel, and furthermore it would be expensive to maintain a light, and should the light fail to burn, it might cause that company serious trouble if some one should collide with the logs. The Lumber Company further states, "This company built a dam and secured all flowage rights from the outlet of the lake down the river a distance of one and one-half miles, and there we built a dam. This dam raises the water so as to make it possible to navigate boats from the mouth of the lake to the dam. Before this dam was constructed, it was impossible to navigate the river. Under the circumstances, we do not feel that we should be called upon to protect this boom."

The matter was submitted to the Attorney General by the Commission for a ruling as to our jurisdiction, and citing Sections 4 and 19 of said Chapter 105, which provide as follows:

> Section 4. "* * * And said Commission shall issue all rules and regulations that may in its judgment, be necessary for the safe navigation of all steam boats and all boats propelled by machinery, sailing boats and ferry boats navigating on any of the navigable waters of this state and carrying passengers or freight for hire."
>
> Section 19. "It is hereby made the duty of the Board of Railroad Commissioners to enforce the provisions of this act, and such Railroad Commissioners shall have jurisdiction to make all needful rules providing for the safety of all passengers and freight traveling upon the navigable waters of this state, pro-

vided that such rules are within the provisions of this act."

The Attorney General held in the following language that the Commission had no authority to compel the Somers Lumber Co. to maintain lights to protect boats against accident.

"The jurisdiction which the Railroad Commission has over navigation in this state is conferred by Chapter 105, Session Laws of 1911. This chapter provides only for the inspection of boats carrying passengers or freight for hire on the navigable waters of the state, and making and enforcing sailing rules to be observed by all such boats. It is true that Section 4 provides as your letter states, but this section has reference only to rules and regulations to be observed by boats carrying passengers or freight for hire, and does not confer upon the Commission authority to clear the channel, or erect and maintain light houses, etc. Section 19 is correctly quoted in your letter, but as heretofore stated, the provisions of the act apply only to boats carrying passengers or freight for hire.

You are therefore advised that you have no authority to compel the Somers Lumber Co. to maintain lights to protect boats against accident, which are navigating the waters of Whitefish Lake."

CERTIFICATES AND LICENSES.

Licenses have been issued to qualified captains or pilots, and certificates to vessels engaged in navigation for hire, year ending November 30th, 1912, as follows:

CERTIFICATES.

Name of Boat.	Owned By.	Authorized to Carry. Pas'grs.	Freight. (Tons)
Blue Rock	Campbell Bros.	..	40
Cassie D.	O. Denney	25	4
Doman	Wm. T. Taylor	13	2½
Emiline	Frank Kelly	25	4
Ethel	Denney & Kelly	110	25
Eva B.	P. C. Russell	30	7½
Glacier	Great Northern Ry Co.	20	5
Holt (Ferry)	Flathead County	50	20
Jennie	Olaf Wickner	14	..
Klondike	Hodge Nav. Co.	425	110
Missouri	Olaf Wickner	75	24
Montana	Flathead Lake Trans. Co.	160	40
Moose	Somers Lbr. Co.	..	75
Ora B.	E. C. Bond	7	½
Pioneer	E. C. Bond	16	4
Queen	H. S. Bell, et al	42	10
Red Eagle	Great Northern Ry. Co.	25	6
Somers	Polson-Somers Trans. Co.	100	36
Swan	A. K. Millett	13	1
Therriault (Ferry)	Flathead County	50	21

LICENSES.

Captain's Name.	On the Waters Of.
Anderson,. Alfred P.	Flathead Lake.
Bell, Harry S.	" "
Bond, R. M.	" "
Bond, E. C.	Swan Lake.
Church, C. R.	Ferry, Flathead River, Therrioult's Crossing.
Denny, L. O.	Lake McDonald.
Dewey, W. G.	Flathead Lake.
Elliott, John	Ferry, Kootenai River, Libby.
Enterline, G. J.	Flathead Lake.
Gilpatrick, H. M.	Ferry, Flathead River, Holt's Crossing.
Guillott, Eugene	Hauser Lake.
Haroldson, H. O.	Flathead Lake.
Hodge, Eugene	" "
James, Wm. E.	Hauser Lake.
Kelly, Frank	Lake McDonald.
Macdonald, Angus H.	Flathead Lake.
Meyers, Louis	Lake St. Marys.
Millett, A. K.	Swan Lake.
Mitchell, G. A.	Flathead Lake.
Palmer, N. A.	" "
Russell, Perry C.	" "
Schuett, Wm.	" "
Smith, C. L.	" "
Taylor, Wm. T.	" "
Whisman, F. E.	Lake McDonald.
Wickner, Olaf	Missouri River.

VIOLATION—NAVIGATION LAWS.

The Commission has found it necessary in only one instance, during the past year, to bring an action for violation of the navigation laws of the state, Chapter 105, Session Laws 1911, W. F. Steward, the owner and operator of the gasoline boat "Butte" on Whitefish Lake, being the only offender.

The "Butte" was inspected on June 24, 1911, by the Commission's regularly authorized inspector, who recommended that the boat be licensed to carry 34 passengers or two tons of freight. It was not equipped, however, with the requisite number of life preservers, the law specifying that one life preserver shall be carried for each passenger and one for each member of the crew. The "Butte" had in all six life preservers, and certificate from this Department was not issued, Mr. Steward being notified that he must first supply the necessary equipment. He continued to engage in commercial navigation, and numerous letters from this Department addressed to him remained unanswered.

Having reason to believe that the boat "Butte" was still disregarding the provisions of the law, particularly in regard to safety appliances, the Commission instructed the Attorney General under date August 20th, 1912, to bring an action against Mr. Steward, to which he plead guilty, and was fined $5.00, upon the assurance that his boat would immediately be equipped to comply with the law in every respect.

Section 21, Chapter 105, Session Laws 1911, provides:

> "Any person violating any of the provisions of this Act shall be deemed guilty of a misdemeanor, and upon conviction thereof, be fined in any sum not exceeding $300.00, or imprisonment in the county jail not exceeding six months."

The fine imposed upon this offender, viz., $5.00, is merely equivalent to the price of a certificate, so that in reality, Mr. Steward has simply paid the price of a certificate, notwithstanding that he has been violating the law throughout the season.

FLATHEAD LAKE—SUNKEN LOGS.

The Commission's attention was called to numerous logs water soaked and one end projecting out of the water, in Flathead Lake, which were alleged and probably rightfully, dangerous to navigation of small craft. These logs belonged to the Somers Lumber Company, and made their appearance from time to time as the surface of the lake fell. It was only necessary to bring the matter to the attention of the Lumber Company with request that these "dead-heads" be pulled out, which was promptly done, and taken to the mills.

Our inspector, under date November 15th, reports as follows:

> "Regarding the dead-head logs in Flathead Lake, will say the Somers Lumber Company has cleaned them up as much as possible. They will drift out under the boom more or less all the time, but there should be no further cause for complaint."

AMENDMENTS.

Title to Chapter 105, Session Laws 1911, reads: "An Act to provide for the inspection of steam boats, and all other boats propelled by machinery, sailing craft, ferry boats and boats carrying passengers or freight for hire on any of the navigable waters of the State of Montana, to provide for their inspection and for the appointment of an inspector of boats, to define his duties, to provide for his compensation and to provide sailing rules for all such boats, and for the general superintendence and control of navigation by the State Board of Railroad Commissioners, and providing a penalty for the violation of any of the provisions of this Act." See pages 124 to 131 inclusive, third annual report, for full copy of the law.

It will be noted that the act applies only to boats carrying passengers or freight **for hire**, and does not, therefore, govern tug boats, barges, etc., engaged in freighting or towing, when such freighting or towing is done by the owners of the boats so employed and transporting their own material. It cannot be said that such service is performed "for hire," yet, under the law, inspection is not required to determine whether or not the vessel is sea-worthy, nor are these boats required to provide fire protection, life saving equipment, signal lights, or any of the safe-guards specified in the Act, notwithstanding that the absence of such might reasonably be considered hazardous to the lives of the crew and a menace to other craft.

There is another situation in connection with this subject, namely, obstructing navigable waters. In the preceding pages it will be observed that the Attorney General has held that this Commission lacks jurisdictio,n and cannot under the present statute, compel the removal of logs or other obstructions in the water, even though such are unquestionably dangerous to navigation.

Therefore, believing that dangerous conditions exist, the Commission recommends an amendment to the law making such tug boats, barges, etc., amenable to the State, and also bestowing the right upon the Board to exercise authority in the matter of obstructed navigable waters.

Section 18 of said Chapter 105, provides for the inspector's compensation, as follows: "The inspector shall receive for all services performed by him under the supervision of the Railroad Commission, in full for such service as inspector, the

fees required to be paid for the license and certificate issued and for the inspection of such boats, and no other or further fees." The field of navigation in Montana is limited, and for the year 1911, such fees amounted to $670.00, and for 1912, $485.00. Out of this he is required to pay his own traveling and other incidental expenses. It will at once be apparent that the position is not an attractive one; in fact the present incumbent has continued in the service only upon the earnest request of the Commission until such time as the compensation can be placed on a more equitable basis. Few indeed are qualified to perform the duties of this inspector. He must have a technical knowledge of ship building as well as the rules and art of navigation, and to insure the services of one competent and qualified, the Commission recommends an amendment to the statute placing his salary at twelve hundred dollars a year, and the fees for inspection, certificates, and licenses to be paid into the State Treasury.

PART V.

MISCELLANEOUS

RAILROAD MILEAGE.

Montana.

The following table, as will be noted, shows a total of 4,377.3 miles of railroad in the state, November 30th, 1912. The only new construction during the year being the Butte, Anaconda & Pacific extension from Browns to Southern Cross 16.5 miles, the new line of the Gallatin Valley Railway Company from Bozeman to Menard 24.9 miles, and the Great Northern branch from Lewistown connecting with its Billings-Great Falls line at Moccasin, 29.9 miles in length. This latter, however, is not quite completed but it is expected that the branch will be open for traffic about December 1st, 1912.

The Chicago, Milwaukee & Puget Sound Railway Company is doing considerable construction work north, east and west from Lewistown, and in response to the Commission's request for a brief outline showing its present status and probable date of completion, says:

> "Lewistown-Great Falls line: Total distance 138 miles; grading well advanced; work has been under way since June, 1912. Will proceed all winter on tunnels and heavy cuttings and concrete structures. Expect to complete entire line by December, 1913."
>
> "We are building our new line from Colorado Jct. to a point a short distance west of Cliff Junction, in all 14.3 miles. This we expect to have completed and in operation during the month of May, 1913."
>
> "Lewistown-Grass Range Line: Total distance 36 miles; last 12 miles being graded. Twenty-four miles about ready for track laying. Expect to complete line July, 1913."
>
> "Hilger-Dog Creek Line: Total distance 24 miles; under contract, grading commenced. Will proceed all winter if possible. Expect to operate by August, 1913."
>
> "Lewistown-Roy Line: Total distance about 26 miles; under contract. Expect to work during winter and expect to operate by August, 1913."
>
> "Great Falls, west via Choteau, total distance 65 miles; contract let; expect to work all winter on heavy portion of line, expect to complete grading and bridges by August, 1913. Unable to say when track will be laid."
>
> "Total new mileage under contract 303; of course the estimated date of completion is approximate, and a good many contingencies may arise which may defer the completion of the line until a later date."

Mr. E. A. Tennis, Vice President of the "Three Forks, Helena & Madison Valley Railroad," gives the Commission the following statement:

> "The Three Forks, Helena & Madison Valley Railroad will be built from Helena to the Yellowstone Park, a distance of about 150 miles. The first section of 25 miles from Three Forks to Radersburg is about ready for rails and ties, and cars should be moving not later than February 1st, 1913. From Radersburg the line will be extended via Toston and the Prickly Pear Valley to Helena, and later will be extended south from Three Forks via the Madison Valley to the Yellowstone Park, thus serving a section of your state much in need of transportation facilities."

MILEAGE OF ALL ROADS.

Great Northern.

From—	To—	Main Line. (Miles)	Branch Lines. (Miles)
Dakota Line	Idaho Line	691.3	
Great Northern Jct.	Great Falls	222.9	
Great Falls	Shelby	99.9	
		1,014.1	
Bainville	Plentywood		53.4
Pacific Jct.	Great Falls		119.0
Great Falls	Butte		171.7
Lewistown	Moccasin		29.9
Armington	Neihart		38.2
Gerber	Stockett		7.8
Lewis	Sand Coulee		1.6
Great Falls	Black Eagle		4.4
Vaughn	Augusta		40.6
Virden	Sweet Grass		36.3
Columbia Falls	Marion		38.2
Kalispell	Somers		11.1
Rexford	Gateway		9.8
			562.0

Northern Pacific.

Dakota Line	Idaho Line	777.	
Logan (Via Butte)	Garrison	123.6	
DeSmet (Via St. Regis)	Paradise	93.3	
		993.9	
Glendive	Sidney		55.7
Laurel	Red Lodge		44.3
Silesia	Bridger		19.7
Mission	Wilsall		22.9
Livingston	Gardiner		54.3
Manhattan	Anceney		15.1
Great Northern Trans.	Elkhorn		22.8
Rimini Jct.	Rimini		16.4
Clough Jct.	Marysville		12.6
Sappington	Norris		21.
Harrison	Pony		6.6
Whitehall	Alder		45.7
Drummond	Philipsburg		25.9
Missoula	Darby		65.5
St. Regis	Lookout (Idaho Line)		38.2
			466.7

Chicago, Milwaukee & Puget Sound.

From—	To—	Main Lines. (Miles)	Branch Lines. (Miles)
Dakota Line	Colorado Jct.	520	
Cliff Jct.	Idaho Line	214	
		724	
Harlowton	Lewistown		62.4
Lewistown	Hilger		18
			80.4

Chicago, Burlington & Quincy.

Wyoming Line	Huntley	105	
Frannie Jct.	Fromberg		29.9

Oregon Short Line.

Silver Bow Jct.	Idaho Line	125.4	
Idaho Line	Yellowstone		9.5

Butte, Anaconda & Pacific.

Butte	Browns	31.8	
Stuart	Anaconda		8.4
Browns	Southern Cross		16.5
			24.9

Montana, Wyoming & Southern.

Bridger	White Sulphur Springs	22.9	

Yellowstone Park Railway.

Chestnut	Cooks Mine	10.4	

Gallatin Valley Railway.

Bozeman	Three Forks	38.4	
Bozean Hot Springs	Salesville		4.7
Belgrade Jct.	Belgrade		5.2
Bozeman	Menard		24.9
			34.8

White Sulphur Springs & Yellowstone Park.

Ringling	White Sul. Sp'gs	22.9	

Montana Western Railway.

Conrad	Valier	20.2	

Gilmore & Pittsburgh R. R.

Armstead	Idaho Line	37	

Big Blackfoot Railway.

Bonner	McNamara's Landing	11	

Summary.

	Main Line. (Miles)	Branch Lines. (Miles)	Total. (Miles)
Great Northern Railway	1,014.1	562.0	1,576.1
Northern Pacific Railway	993.9	466.7	1,460.6
Chicago, Mil. & Puget Sound Ry.	734.	80.4	814.4
Chicago, Burlington & Quincy R. R.	105.	29.9	134.9
Oregon Short Line Railroad	125.4	9.5	134.9
Butte, Anaconda & Pac. Railway	31.8	24.9	56.7
Montana, Wyo. & Southern R. R.	25.	.....	25.
Yellowstone Park Railway	10.4	.....	10.4
Gallatin Valley Railway	38.4	34.8	73.2
White Sulphur Springs & Yellowstone Park Railway	22.9	.....	22.9
Montana Western Ry.	20.2	.....	20.2
Gilmore & Pittsburgh R. R.	37.	.....	37.
Big Blackfoot Ry.	11.	.....	11.
TOTAL	3,169.1	1,208.2	4,377.3

RAILROAD MAP OF MONTANA.

It becomes necessary to again revise our railroad map of the state, owing to construction of new lines of railroad and the sub-division of several counties. We are now compiling the data and expect to have the new edition ready for distribution soon after January 1st, 1913.

We will be pleased to mail a copy to any one desiring same, without charge; write the Commission.

BLUFFPORT (or Lock Bluff)—Track to Coal Mine.

Refer to Page 154, Commission's annual report, year ending November 30th, 1911, which has reference to the contemplated removal of the track to a certain coal property 5.8 miles west of Calabar, Montana, for the reason that the property had been abandoned at least temporarily. Development of the mine had been discontinued on account of some defect in title to the land, and for the reason that operations would probably be resumed when the question of title were settled, the Commission authorized the Chicago, Milwaukee & Puget Sound Railway Company to take out the main line switch in order to remove an element of danger. The balance of the track was, however, subsequently taken up, and the owners of the coal property made formal complaint to the Commission to have the track re-laid. The complaint follows:

"TO THE BOARD OF RALROAD COMMISSIONERS OF THE STATE OF MONTANA.

THE COAL CREEK COAL COMPANY,

Complainant,

vs.

CHICAGO, MILWAUKEE & PUGET SOUND RAILWAY COMPANY,

Defendant.

The petition of the above named complainant respectfully shows:

I.

That your complainant is a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with principal office at Miles City, Montana, and is engaged in the development of a coal mine at Lock Bluff between Calabar and Thurlow, Montana, on the Chicago, Milwaukee & Puget Sound Railway, a short distance west of Miles City, and of which corporation, J. L. Wester is the duly elected, qualified and acting Secretary.

II.

That the above defendant is a common carrier engaged in the transportation of persons and property by railroad between points in the State of Montana, and as such common carrier is subject to the provisions of Chapter 136, Laws of 1909, and referring particularly to Section 4 thereof.

III.

That owing to some defect in the title to the coal land, complainant was obliged to discontinue operation of this mine temporarily, and on or about February 27th, 1911, the defendant as a precautionary measure, removed the switch and frog from the spur track serving said coal mine, and soon thereafter, on account of washout troubles, took up the rails and fastenings from said spur, and used this track material elsewhere. The defendant originally laid and paid the entire cost of this spur track, the sole purpose of which was to enable the complainant to operate his mine, and at the time that the spur was taken out, it was the understanding verbally that the track would be replaced when the operation of the mine was resumed.

IV.

Complainant has expended in the preliminary development of said coal property, more than twenty thousand dollars, and is now ready to ship coal, but is unable to do any business without the replacement of said spur track, which the defendant objects to installing, giving as its reasons, an obstructed view from trains approaching the location of said spur, and furthermore, that the main line at that point is too close to the Yellowstone River to permit of safe operation of the coal mine track.

V.

Complainant is prepared to market and ship on an average of two cars of coal per day during the six winter months, and expects to operate this mine during the summer, but cannot say at this time what the summer shipments would amount to.

VI.

Complainant is willing to pay his proportion of the cost of constructing said spur track in accordance with the "Usual and customary contract of the particular railroad company in constructing such spurs," as provided for in Section 4, Chapter 136, Laws of 1909, and is further willing to place a watchman at said spur to insure safety and assume the entire expense of this additional precaution.

WHEREFORE, petitioner prays that the aforesaid defendant be required to answer the charges herein, and that after due hearing and investigation, an order be made commanding said defendant to construct a spur track from its main line in such a way as will serve complainant's coal property, and make such other and further order as the Commission may deem necessary and just in the premises.

COAL CREEK COAL COMPANY,
Complainant."

Dated at Glendive, Mont., this 2d day of December, 1911.

In its answer, the Chicago, Milwaukee & Puget Sound Railway Company states that the railway company originally laid and paid the entire cost of this spur, and it was understood and agreed by and between the railway company and the predecessor in interest of this complainant at the time the track was originally constructed, that the predecessor in interest of the complainant, should pay all the expense for said track except the metal; that after the track was put in upon the terms and

conditions alleged, and before a bill was presented, the mine was shut down and operations ceased. That owing to washouts in the vicinity, the rails and fastenings from this spur track were taken up and used elsewhere. Defendant objected to replacing the spur, giving as its reason that the view is obstructed approaching this location, and for the further reason that the main line at that point is too close to the Yellowstone River to permit of safe operation of the coal mine track.

However, in its answer, the defendant agreed that if in the judgment of the Board of Railroad Commissioners of the State of Montana, the said spur should be replaced, and would so order, the spur would be replaced on condition that the complainant pay all the expenses thereof, and provide a watchman to insure the safety of traffic upon the main line, and assume the entire expense of said watchman.

This proposition was accepted by the complainant, and the track reconstructed upon the terms and conditions mentioned herein.

CLAIMS.

From the number and nature of complaints brought to the attention of the Commission, relating to shippers' and consignees' claims against common carriers for loss and damage, and from close observation of the subject, it would appear that the provoking procrastination in the settlement or denial of such claims is due largely to incompetent or indifferent employes. It is frequently reported that claims presented, or correspondence pertaining thereto, is apparently ignored; at least no response has been made, and claimants whose experience this has been, unanimously denounce the railroads as conspiring in this way to evade payment, knowing, or rather expecting that the injured patron will drop the matter in time.

The Commission is not oblivious to the fact that many unjust claims are presented against the railroads, and it is not our conclusion by any means that all claims should be paid. All claims, must, however, be investigated before the carrier is in a position to pass upon their merits, and there would appear to be no reason why claimants should not be advised within a reasonable length of time, either by payment of the amount claimed, or by refusal to assume liability, giving the reasons therefor; but silence or defiance on the part of the railroad company incurs the ill will of the shipper, and fosters a demand for legislation on the subject.

It is noticeable that claims involving large amounts of money are given more prompt consideration. Naturally this might be expected, for two reasons; first, the railroad company for its own protection must determine its responsibility or otherwise, for the loss sustained, and secondly the amount at issue will warrant claimant to bring suit against the company in the event that a satisfactory adjustment is not voluntarily made. The great difficulty, however, is the delay and indifference manifested in the matter of claims of comparatively minor importance. The Commission has no evidence before it to warrant the accusation quite generally expressed, that this is the policy of the railway companies; this we do not think to be a fact, but, as already stated, we believe the employes in subordinate positions are at fault. Whether this be true or not, it remains the duty of the railroad company to perfect its organization by whatever means it may elect, to the end that all will be accorded the same treatment, whether great or small.

We therefore recommend the enactment of a law giving the Railroad Commission the power to promulgate rules and regulations prescribing the time within which claims against common carriers must either be paid or liability declined.

Subject: Routing.

Robert Emmet Copper Company,

vs.

Northern Pacific Railway Company.

Complainant's principal place of business is Missoula, Montana, and as the name of the company would imply, is engaged in mining.

On April 29th, 1912, complaint was made in regard to the manner of handling less than carload shipments by freight from Missoula to Amazon, Montana, the latter being a non-agency station on the line of the Great Northern Railway, the shipments in question being handled by the Northern Pacific to Boulder, and there delivered to the Great Northern for movement to destination. The depots of the respective companies at Boulder are about three-quarters of a mile apart, and the transfer involved a drayage charge to which the complainant objected.

From Helena to Boulder, the Northern Pacific Railway Company has no line of its own, using the tracks of the Great Northern under contract, and on account of the location of depots at Boulder, it seemed to the Commission that this business should properly be transferred to the Great Northern at Helena, which would not only eliminate the transfer charge at Boulder, but expedite the service. It was accordingly arranged, and complainant has advised that it has no cause for complaint since the transfer has been made at Helena.

Subject: Alleged Loss of Furs.

T. J. Kitts,

vs.

Wells, Fargo and Company Express.

This complainant is a resident of Moore, Montana, and in his complaint filed October 13th, 1911, alleged that a shipment of furs via Wells, Fargo & Company Express from Moore, Mont., December 14th, 1909, consigned to N. F. Tanner, Holland, New York, had never reached destination, and that the agent of the express company at Moore acknowledged that the package had been lost.

This Commission does not exercise jurisdiction over claims for loss or damage, but investigation was made to ascertain, if possible, what became of it, and it developed that the shipment was delivered to the consignee at Holland December 23rd, 1909, and the express company held his receipt for same.

Subject: Public Crossing.

Chester, Montana, Residents of,

vs.

Great Northern Railway Company.

Petition dated April 19, 1912, was presented by the residents of Chester and vicinity, praying that the Great Northern Railway Company be required to construct a wagon road crossing over its tracks at a point just east of the depot at that station, and stating that during rainy weather it is impossible to transfer freight from the station to the stores on account of teams miring in the mud on the north side of the tracks.

Upon investigation, it was found that during high water the reservoir overflowed and caused the conditions complained of in this petition. The approaches to the crossing were filled in with cinders and put in shape so that wagons loaded to their full capacity were handled over said crossing of the Railway Company's tracks without difficulty. Petitioners advised the Commission that the work is satisfactory and they have no further cause for complaint.

Subject: Claim for Loss and Damage.

Orlando Miller,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

This complainant is a resident of Shawmut, Montana, and on September 16th, 1911, filed complaint with the Commission seeking damages on a shipment of household goods from Minneapolis.

This Commission does not exercise jurisdiction over claims for loss and damage, and the correspondence was referred to the proper officer of the defendant for such investigation and action as might be necessary, and under date, November 11th, freight claim agent of the C. M. & P. S. wrote Mr. Miller, stating that upon presentation of certain documentary evidence, his claim would be allowed, and paid. Again on December 13th, the freight claim agent called attention to the earlier correspondence, and requested the documents referred to. The Commission wrote Miller on December 16th, but none of these letters have been answered, and it is evident that complainant has either changed his address, or else has decided to drop the matter.

Subject: Shipments Delayed in Transit.

A. M. Holter Hardware Company,

vs.

Northern Pacific Railway Company,

Chicago, Milwaukee & Puget Sound Railway Company,

and the Gallatin Valley Railway Company.

This complaint alleged that less than carload shipments of freight from Helena to points on the Gallatin Valley Railway via the Northern Pacific and the C. M. & P. S. were an unreasonable length of time on the road; so much so, that Helena jobbers were placed at a serious disadvantage in competition with the prompt service from Butte into Gallatin Valley territory.

A number of shipments were traced from Helena through to destination. This investigation developed that the delay was largely, if not entirely, at the junction points, due principally to transfer cars not being promptly placed at the platform; in some instances as long as five days at one place. This condition, of course, was the result of employes not giving the work the attention they should, carelessness in fact, and when all the data was placed before the management of the operating department of the various roads, such steps were taken as to remove the cause, and complainants now advise the Commission that "The service has improved in the past month, and freight is coming through all right now."

Subject: Temporary Absence of Agent.

J. C. Solomon,

vs.

Northern Pacific Railway Company.

Complainant's business has not been stated, but it would seem that the defendant's agent at Alder, Montana, was absent from Saturday afternoon, January 27th, until 1:30 P. M. Monday the 29th, during which time, the depot was closed, and this complainant states that he was unable to transact his business with the defendant during this time, and thereby inconvenienced. The nature of the business that he wished to transact, is not known.

The facts in the case are, that the agent was called elsewhere on important business, and Alder, being located on a branch line where there was no other employe available to relieve him, the superintendent gave permission to the agent to be absent, and instructed that the station be locked over Sunday. In so doing, the defendant did not subject itself to any penalty provided by law.

Subject: Loading Wood at Summit, Montana.

Gleason Bros. and Geo. Poor,

vs.

Great Northern Railway Company.

These complainants, on December 12th, 1911, complained that the Great Northern Railway Company had declined to furnish cars for loading with wood at Summit, and that by reason of such refusal, they were forced into idleness and under heavy expense, with their outfits and men on the ground.

Upon receipt of these complaints, which were both informal, the Commission was led to the belief that the railway company had refused to furnish cars on account of the deep snow in the mountains, Summit being located at the top of the grade. Upon investigation, however, it was learned that the spur track where these complainants expected to load their wood, was a temporary track put in during the Summer months, for the accommodation of work trains on the hill, and that permission had been given the wood camps to load cars on said spur so long as it did not interfere with the operation of other trains. It also developed that this spur has been connected up with the main line each summer for a number of years past, and the switch taken out in the fall. At the time these complaints were made, the true situation was that the track had been disconnected, and of course, cars could not be set out, and inasmuch as the spur was not considered a commercial one, but as stated above, simply for convenience in handling work trains, the Commission did not consider that it should request the defendant to replace the switch.

There are many such spurs throughout Montana, which are of necessity in connection with construction work, grade revision, ballasting, etc., and we feel that the carriers have a perfect right to put these spurs in to suit their needs from time to time, and take the switch out, which is always considered an element of danger, when its purpose has been served.

Subject: Detention to Stock.

W. O. Goble,

vs.

Chicago, Milwaukee & Puget Sound Ry. Co.

This complainant is a rancher in the vicinity of Baker, Montana, and his complaint in substance was to the effect that on the 29th day of December, 1911, he shipped from Anoka, Nebraska, to Baker, Montana, a car of Emigrant Movables, including among other items, 11 head of live stock.

That before accepting this shipment, the Chicago & Northwestern Railway Company required the live stock to be inspected to comply with the Montana laws. That such inspection was made and approved by the C. & N. W. Co., and the health certificates, Mallein tests and charts attached to the way-bill before starting.

That the shipment reached Marmarth, N. D., and at that point, the car was set out, where it was held for a period of 14 days upon orders of the C. M. & P. S. Ry. Company's agent for further inspection, and when finally forwarded to destination, Baker, a demand was made for additional charges in the sum of $97.50, payment for 13,000 pounds of hay which said 11 head of stock consumed in the 14 days detained at Marmarth.

Upon receipt of this complaint, the Commission wired, suggesting that the charges be paid, and make claim for refund. This telegram was confirmed by letter same date, and further information requested. We desired to get at the facts, and requested the name of the veterinarian and address, who made these tests originally, and furnished the documents which were attached to the C. & N. W. billing. Complainant has not replied to this letter, nor have we had any further communication with him. However, Dr. M. E. Knowles, State Veterinarian for Montana, has a file of correspondence in regard to this shipment, which we have seen, and which does not indicate that the stock was inspected as stated by complainant before leaving Anoka, but appears to have been inspected at Tyndall, S. D., by an unauthorized inspector whose certificates Dr. Knowles refused to accept, and declined to permit the stock to enter Montana until properly inspected, which was done at Marmarth.

The facts in this case do not appear to have been correctly

stated in the complaint, and upon the investigation we have made, we are led to the conclusion that the stock had not been inspected according to law, and that the 14 days' detention was necessary before it could be permitted to enter this state, and could have been and would have been avoided, had this complainant handled the matter properly in the first place.

Subject: Spur Track to Mill.

St. Regis Lumber Company,

vs.

Northern Pacific Railway Company.

On May 29th, 1912, the St. Regis Lumber Company of Taft, Montana, complained to the Commission that an application had been presented to the railway company five months before, for a spur track to their mill at Sildix, Montana. That they had made the grade, but the railway company had failed to lay the steel, and connect the track with the main line, so that cars could be placed for loading or unloading.

An investigation was made which determined that while the grading had been done by the lumber company, it was not in accordance with the stakes of the railway company's engineer, and until such time as the grade was made to conform thereto, the railway company declined to go ahead with the laying of the track. There also had been some controversy between the lumber company and the railway company's roadmaster in regard to details. The track material had been unloaded on the ground some time prior, and when the grade was completed to the satisfaction of the engineering department, the track was laid and work completed July 6, 1912.

Subject: Trackage to Elevator Site.

Farmers' Grain Elevator Company,

vs.

Great Northern Railway Company.

Section 4, Chapter 136, Laws 1909, confers upon this Commission the power and authority to compel railroad companies to construct industrial or commercial spurs to industries when there is or will be sufficient traffic to require such facilities, same to be constructed pursuant to the usual and customary contract of the railroad company, provided that such industrial or commercial spurs shall not be ordered except within the limits of extreme switches, of stations or yards, or at sidings, unless such station, yards, sidings or spurs are more than seven miles apart, nor unless such spurs can be so placed as to be reasonably safe and not unnecessarily interfere with main line operation.

Complainant first took the matter up with the Commission on August 3rd, 1912, informally, stating that an elevator would be constructed at Broadview, Yellowstone County, Mont., and that a site had been purchased on private ground, adjoining the railway company's right of way, but that the railway company had declined to put in the necessary trackage to the proposed location of the elevator, and insisted that same should be located on the west side of the main line. This, complainant alleged was impracticable, on account of the topography of the country, and asked the Commission to make an investigation of conditions. This was done, and it seeming to us that the site selected by the elevator company was more favorable than on the west side, matter was submitted to the railway company for further consideration with the result that the General Traffic Manager recommended that trackage be put in as requested by complainant.

The season was so far advanced, however, that it was decided not to erect the elevator this Fall, but the work will be started next Spring, and it is the Commission's understanding that the railway company will put in the tracks to the desired location, and upon the usual and customary terms in constructing such facilities to private industries.

Subject: Wagon Road Crossing.

A. D. Monson,

vs.

Great Northern Railway Company.

This complainant, a resident of Dunkirk, Montana, complained on Sept. 24th, 1912, that the approaches to wagon road crossing had been rendered impassable by the extension of certain tracks, and that the complainant as well as other residents of Dunkirk were seriously inconvenienced thereby.

Matter was taken up with the railway company, and on October 22nd, Mr. Monson advises that the crossing "is now in a satisfactory condition."

Subject: Goods Lost in Transit.

E. E. Shotraw,

vs.

Erie Railroad Co., et al.

Bill of lading was issued by the Erie Railroad Company at Chemung, New York, July 9th, 1912, covering one large box of clothing and one trunk crated, consigned to the above named at Helena, Montana, and on October 6th, the Commission incidentally learned that the shipment had not been received, although no complaint had been made. Upon inquiry, it was found that the consignee had repeatedly called upon the local agent of the railway company, and on October 2nd, was informed that "there was no record of the shipment at Minnesota Transfer." The Commission's representative secured the original bill of lading, and took the matter up by wire at once with the general freight agent of the Erie Railroad, asking for waybill reference, and delivery to connecting line at Chicago. This resulted in locating the shipment on the line of the Erie, same having originally checked short at Marion Transfer. The goods were at once forwarded by express to Helena, the Erie Company assuming the express charges.

BONDS.

The bonds to be given by the members of this Board and the Secretary thereof, are provided for in Section 2 of the Railroad Commission law, in the sum of $25,000. In many states, bonds are not required, and comparing Montana with **all other** Commissions, we find that the bonds demanded in this state are higher than in any other, as will be noted from the following:

State.	Name of Commission	Amt. of Bonds.
Illinois	Railroad & Warehouse Com'n	$20,000
Indiana	Railroad Com'n	10,000
Kansas	Public Utilities Com'n	10,000
Minnesota	Railroad and Warehouse Com'n	20,000
Missouri	Railroad and Warehouse Com'n	20,000
Montana	Railroad Com'n	25,000
North Dakota	Railroad Com'n	10,000
Oregon	Railroad Com'n	10,000
South Carolina	Public Service Com'n	1,000
South Dakota	Railroad Com'n	5,000
Tennessee	Railroad Com'n	20,000
Washington	Public Service Commission	20,000

There does not appear to be any necessity for bonds of so large a denomination; the premium is high and somewhat burdensome, and in view of the fact that this department handles only such funds as are paid for certificates to boats engaged in commercial navigation, and for licenses to the captains thereof, we respectfully request that the law be amended placing the Commissioners' bonds and those of the Secretary at not more than $10,000.

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